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ANNOTATED

(Statutes Enacted, Amended, or Repealed by Special Session, June 1986)

RULES OF

APPELLATE PROCEDURE

(As Amended By Supreme Court Order, June 16, 1986, Effective January 19, 1987)

1986

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MONTANA CODE ANNOTATED

Adopted by Chapter 1, Laws of 1979

DIANA S. DOWLING
Code Commissioner

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NOTICE

(Code Sections Affected)

The following sections were affected by the 49th Legislature in Special Session:

2-9-101
2-9-106 through 2-9-108
2-18-301
2-18-303 through 2-18-305
2-18-311 through 2-18-315
2-18-703
2-18-1103
2-18-1106
3-10-207
5-2-301
5-12-303
7-4-2107
7-4-2502 through 7-4-2504
7-4-2510
7-6-302 through 7-6-306
7-6-309
7-6-2321
7-6-4232
7-6-4453
7-32-2123
15-1-402
15-6-144, 15-6-145
15-6-148, 15-6-149
15-6-153, 15-6-154
15-7-102
15-7-202
15-8-111
15-10-202
15-30-204
15-35-108
15-70-204
17-1-202
17-2-107
17-3-201
17-5-422
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18-5-501 through 18-5-504
19-1-602
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20-7-324
20-9-142
20-9-318, 20-9-319
20-9-343, 20-9-344
39-51-1301
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41-5-306
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44-1-501
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46-18-236
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50-78-301
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53-21-112
53-21-164
53-21-501, 53-21-502
53-21-505
53-30-202
53-30-211
60-3-216
61-3-536
69-1-401 through 69-1-404
75-1-1101
90-4-103, 90-4-104
90-4-109
90-4-111
90-6-205

These sections follow. We suggest you mark the affected sections in the appropriate volumes of the Code to remind yourself to consult this pamphlet when researching such sections.

TITLE 2

GOVERNMENT STRUCTURE AND ADMINISTRATION

CHAPTER 9

LIABILITY EXPOSURE AND INSURANCE COVERAGE

Part 1

Liability Exposure

2-9-101. *(Temporary)* **Definitions.** As used in parts 1 through 3 of this chapter, the following definitions apply:

(1) "Claim" means any claim against a governmental entity, for money damages only, which any person is legally entitled to recover as damages because of personal injury or property damage caused by a negligent or wrongful act or omission committed by any employee of the governmental entity while acting within the scope of his employment, under circumstances where the governmental entity, if a private person, would be liable to the claimant for such damages under the laws of the state. For purposes of this section and the limit of liability contained in 2-9-108, all claims which arise or derive from personal injury to or death of a single person, or damage to property of a person, regardless of the number of persons or entities claiming damages thereby, are considered one claim.

(2) "Employee" means an officer, employee, or servant of a governmental entity, including elected or appointed officials, and persons acting on behalf of the governmental entity in any official capacity temporarily or permanently in the service of the governmental entity whether with or without compensation, but the term employee shall not mean a person or other legal entity while acting in the capacity of an independent contractor under contract to the governmental entity to which parts 1 through 3 apply in the event of a claim.

(3) "Governmental entity" means and includes the state and political subdivisions as herein defined.

(4) "Personal injury" means any injury resulting from libel, slander, malicious prosecution, or false arrest, any bodily injury, sickness, disease, or death sustained by any person and caused by an occurrence for which the state may be held liable.

(5) "Political subdivision" means any county, city, municipal corporation, school district, special improvement or taxing district, or any other political subdivision or public corporation.

(6) "Property damage" means injury or destruction to tangible property, including loss of use thereof, caused by an occurrence for which the state may be held liable.

(7) "State" means the state of Montana or any office, department, agency, authority, commission, board, institution, hospital, college, university, or other

instrumentality thereof. *(Terminates June 30, 1987—sec. 9, Ch. 22, Sp. L. June 1986.)*

2-9-101. *(Effective July 1, 1987)* **Definitions.** As used in parts 1 through 3 of this chapter, the following definitions apply:

(1) "Claim" means any claim against a governmental entity, for money damages only, which any person is legally entitled to recover as damages because of personal injury or property damage caused by a negligent or wrongful act or omission committed by any employee of the governmental entity while acting within the scope of his employment, under circumstances where the governmental entity, if a private person, would be liable to the claimant for such damages under the laws of the state. For purposes of this section, all claims which arise or derive from personal injury to or death of a single person, or damage to property of a person, regardless of the number of persons or entities claiming damages thereby, are considered one claim.

(2) "Employee" means an officer, employee, or servant of a governmental entity, including elected or appointed officials, and persons acting on behalf of the governmental entity in any official capacity temporarily or permanently in the service of the governmental entity whether with or without compensation, but the term employee shall not mean a person or other legal entity while acting in the capacity of an independent contractor under contract to the governmental entity to which parts 1 through 3 apply in the event of a claim.

(3) "Governmental entity" means and includes the state and political subdivisions as herein defined.

(4) "Personal injury" means any injury resulting from libel, slander, malicious prosecution, or false arrest, any bodily injury, sickness, disease, or death sustained by any person and caused by an occurrence for which the state may be held liable.

(5) "Political subdivision" means any county, city, municipal corporation, school district, special improvement or taxing district, or any other political subdivision or public corporation.

(6) "Property damage" means injury or destruction to tangible property, including loss of use thereof, caused by an occurrence for which the state may be held liable.

(7) "State" means the state of Montana or any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality thereof.

History: (1)En. Sec. 2, Ch. 380, L. 1973; Sec. 82-4302, R.C.M. 1947; (2)En. 82-4334 by Sec. 8, Ch. 189, L. 1977; Sec. 82-4334, R.C.M. 1947; R.C.M. 1947, 82-4302, 82-4334(3); amd. Sec. 3, Ch. 675, L. 1983; amd. Sec. 1, Ch. 389, L. 1985; amd. Secs. 1, 3, Ch. 22, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: In (1) of temporary version near beginning of second sentence substituted "2-9-108" for "2-9-107". In (1) of version effective July 1, 1987, near beginning of second sentence after "this section" deleted "and the limit of liability contained in 2-9-107".

Effective Date — Termination: The temporary version was effective July 10, 1986, and terminates June 30, 1987.

1985 Amendment: In (1) inserted second sentence.

Immunity From Suit: If Ch. 389, L. 1985, is interpreted to be a legislative imposition of immunity from suit within the meaning of Art. II, sec. 18, of the Montana Constitution, then under Art. II, sec. 18, Ch. 389, L. 1985, should have been approved by a ⅔ vote of each house of the Legislature. Chapter 389 was approved by a vote of 65-33 in the House and 42-7 in the Senate.

1983 Amendment: Deleted former (2), which read: "(2) As used in 2-9-104, the following definitions apply:

(a) "Economic damages" means tangible pecuniary losses.

(b) "Noneconomic damages" means those damages not included in economic, punitive, or exemplary damages including, without limitation, damages for pain and suffering, loss of consortium, mental distress, and loss of reputation."

2-9-106. Repealed. Sec. 4, Ch. 22, Sp. L. June 1986.

History: En. Sec. 1, Ch. 675, L. 1983.

Compiler's Comments

Effective Date: The repealer was effective July 10, 1986.

2-9-107. Repealed. Sec. 4, Ch. 22, Sp. L. June 1986.

History: En. Sec. 2, Ch. 675, L. 1983; amd. Sec. 2, Ch. 389, L. 1985.

Compiler's Comments

Effective Date: The repealer was effective July 10, 1986.

2-9-108. *(Temporary)* **Limitation on governmental liability for damages in tort.** (1) Neither the state, a county, municipality, taxing district, nor any other political subdivision of the state is liable in tort action for damages suffered as a result of an act or omission of an officer, agent, or employee of that entity in excess of $750,000 for each claim and $1.5 million for each occurrence.

(2) No insurer is liable for excess damages unless such insurer specifically agrees by written endorsement to provide coverage to the governmental agency involved in amounts in excess of a limitation stated in this section, in which case the insurer may not claim the benefits of the limitation specifically waived. *(Terminates June 30, 1987—sec. 9, Ch. 22, Sp. L. June 1986.)*

History: En. Sec. 2, Ch. 22, Sp. L. June 1986.

Compiler's Comments

Immunity From Suit: Since Ch. 22, Sp. L. June 1986, imposed limited immunity on governmental entities, Article II, section 18, of the Montana Constitution required a vote of two-thirds of the members of each house of the Legislature to be effective. Chapter 22 was approved by a vote of 85-8 in the House and 43-7 in the Senate.

Applicability — Termination: Sections 7 and 9, Ch. 22, Sp. L. June 1986, provided that 2-9-108 was effective July 10, 1986; applies to all claims, lawsuits, and causes of action arising after July 10, 1986; and terminates on June 30, 1987.

CHAPTER 18

STATE EMPLOYEE CLASSIFICATION, COMPENSATION, AND BENEFITS

Part 3

Compensation Determination

2-18-301. Purpose and intent of part — rules.

Compiler's Comments

1986 Amendment: The amendment was contingent on renegotiation of collective bargaining agreements; since such contingency didn't occur, the amendment terminated.

2-18-303. Procedures for utilizing pay schedules.

Compiler's Comments

1986 Amendment: The amendment was contingent on renegotiation of collective bargaining agreements; since such contingency didn't occur, the amendment terminated.

2-18-304. Longevity allowance.

Compiler's Comments

1986 Amendment: The amendment was contingent on renegotiation of collective bargaining agreements; since such contingency didn't occur, the amendment terminated.

2-18-305. Allocation between wages and group benefits.

Compiler's Comments

1986 Amendment: The amendment was contingent on renegotiation of collective bargaining agreements; since such contingency didn't occur, the amendment terminated.

2-18-311. Statewide pay schedule for fiscal year 1986.

Compiler's Comments

1986 Amendment: The amendment was contingent on renegotiation of collective bargaining agreements; since such contingency didn't occur, the amendment terminated.

2-18-312. Statewide pay schedule for fiscal year 1987.

History: En. 59-918 by Sec. 4, Ch. 563, L. 1977; R.C.M. 1947, 59-918; amd. Sec. 8, Ch. 678, L. 1979; amd. Sec. 5, Ch. 421, L. 1981 (Executive Order No. 7-81); amd. Sec. 2, Ch. 710, L. 1983; amd. Sec. 4, Ch. 740, L. 1985; rep. Sec. 12, Ch. 6, Sp. L. June 1986; re-en. Sec. 11, Ch. 6, Sp. L. June 1986.

Compiler's Comments

Repeal and Reenactment: Chapter 6, Special Laws of June 1986, was originally introduced to freeze state employee salaries at the fiscal year 1986 level for fiscal year 1987 and reduce appropriations for payment of salaries. It was considerably amended during passage and as enacted provided that the appropriations were to be cut, but unless 95% of the collective bargaining agreements with the state were renegotiated by July 18, 1986, to allow a freeze in salaries, salaries would not be frozen. The introduced bill provided that this section would be repealed and sections 2-18-301, 2-18-303 through 2-18-305, 2-18-311, 2-18-313 through 2-18-315, and 2-18-703 were to be amended to conform to the salary freeze. As the chapter was enacted, if collective bargaining agreements were not renegotiated the exact substance of this section as it read in the 1985 MCA was to be enacted to replace the repealed section and conforming amendments were to terminate. The method of section reenactment was necessary because the contingent effective dates in sec. 16, Ch. 6, would have raised problems if the section was to be retained by reenacting it by repealing its repealer.

Collective bargaining agreements were not renegotiated by July 18, 1986; thus, the other amendments were terminated and this section was reenacted retroactively to July 1, 1986, and the appropriation for salaries was reduced.

For the convenience of Code users and to retain the history of the section, the Code Commissioner has retained the MCA section number for this section, although technically it was repealed and the new enactment would under normal circumstances have been assigned a new section number.

2-18-313. Institutional teachers' pay schedules.

Compiler's Comments

1986 Amendment: The amendment was contingent on renegotiation of collective bargaining agreements; since such contingency didn't occur, the amendment terminated.

2-18-314. Liquor store occupations pay schedules.

Compiler's Comments

1986 Amendment: The amendment was contingent on renegotiation of collective bargaining agreements; since such contingency didn't occur, the amendment terminated.

2-18-315. Blue-collar pay schedules.

Compiler's Comments

1986 Amendment: The amendment was contingent on renegotiation of collective bargaining agreements; since such contingency didn't occur, the amendment terminated.

Part 7

Group Insurance Generally

2-18-703. Contributions.

Compiler's Comments

1986 Amendment: The amendment was contingent on renegotiation of collective bargaining agreements; since such contingency didn't occur, the amendment terminated.

Part 11

Employee Incentive Program

2-18-1103. Powers and duties of the department. The department shall:

(1) adopt rules to equitably administer the employee incentive award program;

(2) provide an opportunity for all employees to participate in the program;

(3) assist agencies in making incentive awards under the program;

(4) grant or deny incentive awards in consultation with the incentive awards advisory council and determine the amount of each incentive award based on first-year monetary savings;

(5) hear appeals from employees on the operation of the program;

(6) prepare a biennial report to the legislature containing a list of incentive awards and the corresponding savings to the state resulting from each employee's suggestion or invention and providing a general review of and recommendations for improving the program; and

(7) send a copy of all suggestions or inventions submitted under this program to the office of the legislative fiscal analyst.

History: En. Sec. 3, Ch. 552, L. 1981; amd. Sec. 1, Ch. 61, L. 1983; amd. Sec. 2, Ch. 103, L. 1985; amd. Sec. 1, Ch. 23, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: Inserted (7).

Effective Date: The 1986 amendment was effective July 10, 1986.

2-18-1106. Agency head to grant award — amount and source of award. (1) After an agency implements an employee's suggestion or invention and the monetary savings to the state is estimated, an agency head, upon written application to and approval from the department and the incentive awards advisory council, may grant an incentive award to an employee whose proposal meets the requirements enumerated in 2-18-1105.

(2) The incentive award shall be 10% of the savings resulting from implementing the employee's proposal for 1 year up to a maximum of $10,000. Larger awards may be proposed and submitted to the legislature for consideration.

(3) The agency head shall pay the employee from the savings in the agency's budget in a single, lump-sum award. If the money saved as a result of the employee's proposal is restricted or unavailable for payment of this kind of award, then the award must be paid by the department from money appropriated for that purpose. This award is in addition to the recipient's regular compensation.

History: En. Sec. 6, Ch. 552, L. 1981; amd. Sec. 1, Ch. 61, L. 1983; amd. Secs. 1, 2, Ch. 103, L. 1985; amd. Sec. 2, Ch. 23, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: In (2) substituted "shall be 10%" for "may not be more than 10%" and increased maximum award from $1,500 to $10,000; and in (3) in first sentence inserted "savings in the" and inserted second sentence.

Effective Date — Applicability: The 1986 amendment was effective July 10, 1986, and terminates on November 1, 1986. Section 4, Ch. 23, Sp. L. June 1986, provided that the amendment to this section applies to employee suggestions or inventions submitted to the department prior to November 1, 1986. To allow time for evaluation of those suggestions or inventions, awards may be granted pursuant to the amendment until June 30, 1987.

1985 Amendment: In (2) increased maximum incentive award from $500 to $1,500.

TITLE 3

JUDICIARY, COURTS

CHAPTER 10

JUSTICES' COURTS

Part 2

Justices of the Peace

3-10-207. Salaries. (1) The board of county commissioners shall set salaries for justices of the peace by resolution and may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set their salaries at the prior fiscal year level if that does not result in a reduction in salary. Salaries must meet the minimum requirements established by this section.

(2) If the salary of the justice of the peace was determined on a fee basis for the years 1971 and 1972, he shall receive a monthly salary of not less than one-eighteenth of the total fees, civil and criminal, collected by the justice or his predecessor in office during the 2 years 1971 and 1972.

(3) If the salary of the justice of the peace was determined on a nonfee basis for the years 1971 and 1972, the justice shall be paid not less than the highest salary earned by the justice or his predecessor for the years 1971 and 1972.

(4) The salary of the justice of the peace may not be less than the salary for the district clerk of the court in that county, except as provided for in subsections (1) and (5).

(5) In the event his court is not open for business full time, the justice's salary shall be commensurate to the workload and office hours of the court.

History: En. Sec. 1, Ch. 491, L. 1973; R.C.M. 1947, 93-413; amd. Sec. 1, Ch. 536, L. 1979; amd. Sec. 1, Ch. 12, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: In first sentence of (1) following "resolution", inserted remainder of sentence; and at end of (4) inserted reference to subsection (1).

Effective Date: The 1986 amendment was effective July 3, 1986.

Cross-References

Judicial salaries not to be diminished during term of office, Art. VII, sec. 7, Mont. Const.

Payment of salaries of county officials, 7-4-2502.

TITLE 5

LEGISLATIVE BRANCH

CHAPTER 2

LEGISLATURE — COMPOSITION AND ORGANIZATION

Part 3

Compensation and Expenses of Members and Officers

5-2-301. Compensation and expenses for members while in session. (1) Legislators are entitled to a salary commensurate to that of the daily rate of a grade 8, step 2, classified state employee in effect when the regular session of the legislature in which they serve is convened under 5-2-103 for those days during which the legislature is in session. The president of the senate and the speaker of the house shall receive an additional $5 a day in salary for those days during which the legislature is in session.

(2) Legislators may serve for no salary.

(3) Legislators are entitled to $50 a day, 7 days a week, during a legislative session, as reimbursement for expenses incurred in attending a session. Expense payments shall stop when the legislature recesses for more than 3 days and shall resume when the legislature reconvenes.

(4) Legislators are entitled to a mileage allowance as provided in 2-18-503 for each mile of travel to the place of the holding of the session and to return to their place of residence at the conclusion of the session.

(5) In addition to the mileage allowance provided for in subsection (4), legislators, upon submittal of an appropriate claim for such mileage reimbursement to the office of the legislative council, are entitled to:

(a) three additional round trips to their place of residence during each regular session; and

(b) such additional round trips as are authorized by the legislature during special session.

(6) Legislators are not entitled to any additional mileage allowance under subsection (4) for a special session if it is convened within 7 days of a regular session.

History: En. Sec. 220, Pol. C. 1895; re-en. Sec. 77, Rev. C. 1907; amd. Sec. 1, Ch. 45, L. 1909; re-en. Sec. 74, R.C.M. 1921; Cal. Pol. C. Sec. 266; re-en. Sec. 74, R.C.M. 1935; amd. Sec. 1, Ch. 23, L. 1955; amd. Sec. 1, Ch. 32, L. 1963; amd. Sec. 1, Ch. 180, L. 1965; amd. Sec. 1, Ch. 274, L. 1969; amd. Sec. 1, Ch. 4, L. 1971; amd. Sec. 1, Ch. 72, L. 1973; amd. Sec. 1, Ch. 5, L. 1975; amd. Sec. 2, Ch. 392, L. 1975; amd. Sec. 20, Ch. 439, L. 1975; amd. Sec. 3, Ch. 103, L. 1977; R.C.M. 1947, 43-310; amd. Sec. 2, Ch. 650, L. 1979; amd. Sec. 1, Ch. 7, L. 1981; amd. Sec. 1, Ch. 144, L. 1981; amd. Sec. 3, Ch. 605, L. 1981; amd. Sec. 1, Ch. 8, L. 1985; amd. Sec. 3, Ch. 693, L. 1985; amd. Sec. 1, Ch. 9, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: In first sentence of (1) substituted "grade 8" for "grade 10" and inserted "in effect when the regular session of the legislature in which they serve is convened under 5-2-103" (effective January 2, 1987).

1985 Amendments: Chapter 8 deleted former (3)(b) that provided mileage allowance "for one additional round trip to their place of residence during each session" without submittal of a claim; in (5) near beginning, inserted clause requiring submittal of claim to legislative council and deleted identical clause from end of (5)(a), thus making claim submittal applicable to (5)(b); in (5)(a) increased additional round trips subject to claim submittal requirement from two to three; and inserted (5)(b).

Chapter 693 in (1) increased salary rate from that commensurate to grade 8, step 2, to that commensurate to grade 10, step 2 (effective January 1, 1987); inserted (2); and in (3) increased legislative expense allowance from $45 to $50 per day during legislative session.

1981 Amendments: Chapters 7 and 605 increased legislative expense allowance from $40 to $45 during a session.

Chapter 144 inserted subsection (4) (now (5) and (5)(a)) allowing two additional trips.

CHAPTER 12

LEGISLATIVE FINANCE ACT

Part 3

Legislative Fiscal Analyst

5-12-303. Fiscal analysis information from state agencies. (1) The legislative fiscal analyst has the authority to investigate and examine the costs and revenues of state government activities and may examine and obtain copies of the records, books, and files of any state agency, including confidential records.

(2) When confidential records and information are obtained from a state agency, the legislative fiscal analyst and staff must be subject to the same penalties for unauthorized disclosure of such confidential records and information provided for under the laws administered by the state agency. The legislative fiscal analyst shall develop policies to prevent the unauthorized disclosure of confidential records and information obtained from state agencies.

(3) The legislative fiscal analyst may not obtain copies of individual income tax records protected under 15-30-303. The department of revenue shall make individual income tax data available by a masking method that conceals the identity of the taxpayer. The masking method may not destroy the statistical integrity of the individual income tax records. The masking method, including how data is masked, must be disclosed to the legislative fiscal analyst.

(4) Every state agency shall furnish the legislative fiscal analyst with copies of all budget requests, at the time of submission to the budget director as provided by law, and if requested, all underlying and supporting documentation.

(5) In the year preceding each legislative session, the budget director shall furnish the legislative fiscal analyst on a confidential basis:

(a) by December 1, a copy of the documents which reflect the anticipated receipts and other means of financing the budget for each fiscal year of the ensuing biennium;

(b) by December 1, a preliminary budget which shall meet the statutory requirements for submission of the budget to the legislature; and

(c) by December 15, all amendments to the preliminary budget.

(6) This section does not authorize publication or public disclosure of information if the law prohibits such publication or disclosure.

History: **En. 43-1115 by Sec. 7, Ch. 448, L. 1975; R.C.M. 1947, 43-1115; amd. Sec. 1, Ch. 25, Sp. L. June 1986.**

Compiler's Comments

1986 Amendment: In (1) substituted "costs and revenues" for "costs" and inserted "and obtain copies of" before "the records"; and inserted (2), (3), and (6).

Effective Date: The 1986 amendment was effective July 10, 1986.

TITLE 7

LOCAL GOVERNMENT

CHAPTER 4

OFFICERS AND EMPLOYEES

Part 21

County Commissioners

7-4-2107. Compensation of county commissioners. (1) Each member of the board of county commissioners in counties of the first, second, third, and fourth class shall receive an annual salary equal to the annual salary established in 7-4-2503 for the clerk and recorder plus $2,000, but the county commissioners may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set their salaries at the prior fiscal year level if that level is lower than the level required by this subsection.

(2) Each member of the board in all other counties is entitled to a salary for each day in which he is actually and necessarily engaged in the performance of board duties as set by resolution of the board. For the fiscal year beginning July 1, 1985, the salary is $60 a day. Thereafter, on or before July 1 of each year, the county commission shall fix a cost-of-living adjusted daily salary by adding to the amount of $60 an increment calculated as provided

in 7-4-2504, but the county commissioners may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set their salaries at the prior fiscal year level if that level is lower than the level required by this subsection.

(3) This section does not apply to counties that have adopted a charter form of government.

History: En. Sec. 347, 5th Div. Rev. Stat. 1879; amd. Sec. 755, 5th Div. Comp. Stat. 1887; amd. Sec. 4222, Pol. C. 1895; re-en. Sec. 2893, Rev. C. 1907; re-en. Sec. 4464, R.C.M. 1921; re-en. Sec. 4464, R.C.M. 1935; amd. Sec. 1, Ch. 176, L. 1939; amd. Sec. 1, Ch. 4, L. 1949; amd. Sec. 1, Ch. 100, L. 1951; amd. Sec. 1, Ch. 82, L. 1955; amd. Sec. 1, Ch. 238, L. 1957; amd. Sec. 1, Ch. 113, L. 1963; amd. Sec. 1, Ch. 260, L. 1965; amd. Sec. 1, Ch. 56, L. 1967; amd. Sec. 1, Ch. 223, L. 1967; amd. Sec. 1, Ch. 177, L. 1969; amd. Sec. 1, Ch. 415, L. 1973; amd. Sec. 6, Ch. 439, L. 1975; amd. Sec. 3, Ch. 493, L. 1977; R.C.M. 1947, 16-912(part); amd. Sec. 2, Ch. 518, L. 1981; amd. Sec. 1, Ch. 264, L. 1985; amd. Sec. 2, Ch. 12, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: In (1) following "$2,000" inserted remainder of subsection; and in (2) following "calculated as provided in 7-4-2504" inserted remainder of subsection.

Effective Date: The 1986 amendment was effective July 3, 1986.

1985 Amendment: In (2) in first sentence, after "salary", deleted "of not more than $50", and inserted the second and third sentences.

1981 Amendment: Substituted "an annual salary equal to the annual salary established in 7-4-2503 for the clerk and recorder plus $2,000" for "an annual salary to be established by resolution of the board in an amount not to exceed the annual salary established in the schedule in 7-4-2503 for the clerk and recorder" at the end of (1); and substituted (2) for "Each member of the board in all other counties is entitled to a salary to be established by the board by resolution in an amount not to exceed $40 per day for each day's attendance on the sessions of the board."

Part 25

Compensation and Official Fees

7-4-2502. Payment of salaries of county officials and assistants. (1) Except as provided in subsection (2), the salaries of the county officers and their assistants may be paid monthly, twice monthly, or every 2 weeks out of the general fund of the county and upon the order of the board of county commissioners.

(2) (a) The salaries of the county attorney and deputy county attorneys authorized by 7-4-2703 are payable monthly, with the salary of the county attorney payable one-half from the general fund of the county and the other one-half from the state treasury upon the warrant of the state auditor.

(b) The county commissioners of each county shall, within 30 days after the election or appointment to fill a vacancy for any cause in the office of county attorney, certify the election or appointment to the state auditor, who shall thereafter draw warrants for such salary in the same manner as for state officers. In case of a vacancy, the county commissioners shall immediately notify the state auditor, and the auditor shall compute the salary due on the basis of the notification.

(3) The board has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to fix the compensation of all county officers not otherwise fixed by law and to provide for the payment of the same and may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set their salaries at the prior fiscal year level.

History: (1)(a), (2)En. Sec. 4595, Pol. C. 1895; re-en. Sec. 3117, Rev. C. 1907; re-en. Sec. 4868, R.C.M. 1921; amd. Sec. 4, Ch. 141, L. 1925; re-en. Sec. 4868, R.C.M. 1935; amd. Sec. 1,

Ch. 7, L. 1945; Sec. 25-601, R.C.M. 1947; (1)(b)En. Sec. 4603, Pol. C. 1895; re-en. Sec. 3136, Rev. C. 1907; re-en. Sec. 4872, R.C.M. 1921; re-en. Sec. 4872, R.C.M. 1935; Sec. 25-602, R.C.M. 1947; (3)En. Subd. 18, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.17, R.C.M. 1935; Sec. 16-1020, R.C.M. 1947; R.C.M. 1947, 16-1020, 25-601, 25-602(part); amd. Sec. 1, Ch. 109, L. 1979; amd. Sec. 9, Ch. 443, L. 1979; amd. Sec. 2, Ch. 719, L. 1985; amd. Sec. 3, Ch. 12, Sp. L. June 1986; amd. Sec. 1, Ch. 17, Sp. L. June 1986.

Compiler's Comments

1986 Amendments: Chapter 12 in (3) following "payment of the same" inserted remainder of subsection.

Chapter 17 in (2)(a) substituted "salary of the county attorney" for "salaries of the county attorney and no more than two deputies"; at end of (2)(a) deleted "Such salaries for the deputy county attorneys include the longevity increases provided by 7-4-2503(3)(d)"; and in first sentence of (2)(b) after "county attorney" deleted "or within 30 days after the appointment of a deputy county attorney authorized by 7-4-2703".

Effective Dates: The 1986 amendment made by Ch. 12 was effective July 3, 1986.

The 1986 amendment made by Ch. 17 was effective July 1, 1986.

1985 Amendment: In (2)(a) substituted "The salaries of the county attorney and deputy county attorneys authorized by 7-4-2703 are payable monthly, with the salaries of the county attorney and no more than two deputies payable one-half from the general fund of the county and the other one-half from the state treasury upon the warrant of the state auditor. Such salaries for the deputy county attorneys include the longevity increases provided by 7-4-2503(3)(d)" for "The salary of the county attorney is payable monthly, with one-half from the general fund of the county and the other one-half from the state treasury upon the warrant of the state auditor"; and in (2)(b) near middle of first sentence, after "office of county attorney", inserted "or within 30 days after the appointment of a deputy county attorney authorized by 7-4-2703".

Composite Section: This section was amended by Ch. 109 and Ch. 443, L. 1979, and a composite section was prepared by the Code Commissioner, 1979. Ch. 109 provided for twice monthly and biweekly paychecks in subsection (1)(a) and in former subsection (1)(b). Ch. 443, a Code Commissioner bill, deleted subsection (1)(b) referring to payment from the contingency fund as inconsistent with subsection (1)(a) referring to payment from the general fund. The composite deleted subsection (1)(b) to avoid the inconsistency. The intent of Ch. 109 is preserved in subsection (1).

7-4-2503. Salary schedule for certain county officers. (1) The salary paid to the county treasurer, county clerk and recorder, clerk of the district court, county assessor, county superintendent of schools, and county sheriff; the county surveyor in counties where county surveyors receive salaries as provided in 7-4-2812; and the county auditor in all counties wherein such office is authorized, for the fiscal year beginning July 1, 1981, is computed by adding the annual base salary of:

(a) $14,000 for the counties of the first through fifth class to the population increment of $10 for each 100 persons or major fraction thereof included in the county's population as determined by the 1980 federal decennial census; or

(b) $12,000 for counties of the sixth and seventh class to the population increment of $20 per 100 persons or major fraction thereof in the county's population as determined by the 1980 federal decennial census.

(2) (a) An elected county superintendent of schools shall receive, in addition to the salary based upon subsection (1), the sum of $400 per year, except that an elected county superintendent of schools who holds a master of arts degree or a master's degree in education, with an endorsement in school administration, from a unit of the Montana university system or an equivalent institution may, at the discretion of the county commissioners, receive, in addition to the salary based upon subsection (1), up to $2,000 per year.

(b) The county sheriff shall receive, in addition to the salary based upon subsection (1), the sum of $2,000 per year.

(3) (a) In each county with a population in excess of 30,000, the county attorney shall be a full-time official under 7-4-2704, and his salary for the

fiscal year beginning July 1, 1981, shall be $36,500. In counties with a population less than 30,000, the county attorney who is a part-time official for a county of the first, second, or third class is entitled to receive an annual salary equal to 60% of the annual salary of a full-time county attorney. A county attorney who is a part-time official for a county of the fourth, fifth, sixth, or seventh class is entitled to receive an annual salary equal to 50% of the annual salary of a full-time county attorney.

(b) In those counties where the office of the county attorney has been established as a full-time position pursuant to 7-4-2706, the salary of the county attorney for the fiscal year beginning July 1, 1981, shall be $36,500.

(c) Beginning on July 1, 1982, and on July 1 of each succeeding year, each county attorney shall be entitled to an increase in salary calculated by adding to his annual salary on July 1, 1981, an increment of 70% of the last previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana may in the future recognize as the successor to that index. However, the county commissioners may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set the salary at the prior fiscal year level if that level is lower than the level required by this subsection (3)(c). The cost-of-living increment for the fiscal year beginning July 1, 1983, and for each subsequent fiscal year shall be added to all cost-of-living increments granted for previous years unless salaries were set for the fiscal year at the level of salaries received in the prior fiscal year. In such case the cost-of-living increment that would have been received for such fiscal year, computed on the prior fiscal year, may not be added to previous increments.

(d) (i) After completing 4 years of service as deputy county attorney, each deputy county attorney is entitled to an increase in salary of $1,000 on the anniversary date of his employment as deputy county attorney. After completing 5 years of service as deputy county attorney, each deputy county attorney is entitled to an additional increase in salary of $1,500 on the anniversary date of his employment. After completing 6 years of service as deputy county attorney and for each year of service thereafter up to completion of the 11th year of service, each deputy county attorney is entitled to an additional annual increase in salary of $500.

(ii) The years of service as a deputy county attorney accumulated prior to July 1, 1985, must be included in the calculation of the longevity increase, but years of service during any year in which the salary was set at the level of the salary of the prior fiscal year may not be included in any calculation of longevity increases.

(4) For each 10th year after the fiscal year beginning July 1, 1981, the latest federal decennial census statistics shall be the basis for computation of population increments under this section. During the intervening 9 years, the computation of population increments applicable on July 1 of each year shall be based on the last calendar year's annual estimates of counties' populations compiled by the federal-state cooperative program for estimates of the university of Montana bureau of business and economic research and the U.S.

bureau of the census or other estimate that the bureau of business and economic research may certify.

History: **Ap. p. Sec. 1, Ch. 150, L. 1945; amd. Sec. 1, Ch. 177, L. 1949; amd. Sec. 1, Ch. 118, L. 1951; amd. Sec. 1, Ch. 222, L. 1953; amd. Sec. 1, Ch. 22, L. 1957; amd. Sec. 1, Ch. 66, L. 1959; amd. Sec. 1, Ch. 195, L. 1961; amd. Sec. 1, Ch. 216, L. 1965; amd. Sec. 1, Ch. 231, L. 1967; amd. Sec. 1, Ch. 284, L. 1969; amd. Sec. 1, Ch. 265, L. 1971; amd. Sec. 10, Ch. 391, L. 1973; amd. Sec. 1, Ch. 474, L. 1973; amd. Sec. 1, Ch. 331, L. 1974; amd. Sec. 3, Ch. 102, L. 1975; amd. Sec. 1, Ch. 195, L. 1975; amd. Sec. 1, Ch. 493, L. 1977; Sec. 25-605, R.C.M. 1947; Ap. p. Sec. 4, Ch. 150, L. 1945; amd. Sec. 1, Ch. 91, L. 1947; amd. Sec. 1, Ch. 177, L. 1949; Sec. 25-608, R.C.M. 1947; R.C.M. 1947, 25-605, 25-608; amd. Sec. 1, Ch. 459, L. 1979; amd. Sec. 4, Ch. 669, L. 1979; amd. Sec. 1, Ch. 518, L. 1981; amd. Sec. 1, Ch. 562, L. 1985; amd. Sec. 3, Ch. 719, L. 1985; amd. Sec. 4, Ch. 12, Sp. L. June 1986.**

Compiler's Comments

1986 Amendment: In (3)(c) inserted second sentence, and following "previous years" inserted remainder of subsection; and at end of (3)(d)(ii) following "longevity increase" inserted remainder of subsection.

Effective Date: The 1986 amendment was effective July 3, 1986.

1985 Amendments: Chapter 562 in (2)(a), at beginning of sentence substituted "An elected county superintendent" for "The county superintendent" and at end of sentence, after "$400 per year", inserted remainder of (a).

Chapter 719 in (1) in introductory clause after "clerk of the district court", deleted "part-time county attorney"; in former (2)(c) deleted first sentence that read: "In counties with a population less than 30,000, the county attorney who is a part-time official shall receive, in addition to the salary based upon subsection (1), the sum of $1,200 per year"; renumbered second sentence of former (2)(c) as (3)(a) and in (3)(a) inserted second and third sentences; renumbered first sentence of former (2)(d) as (3)(b); renumbered remainder of former (2)(d) as (3)(c); inserted (3)(d)(i) and (3)(d)(ii); and renumbered former (2)(e) as (4).

1981 Amendment: Rewrote entire section to substitute present language for specific dollar amounts based on population. For former text see sec. 1, Ch. 459, L. 1979, and sec. 4, Ch. 669, L. 1979. For language of former composite section, see 7-4-2503, MCA 1979.

7-4-2504. Salaries to be fixed by resolution — cost-of-living increments. (1) The county governing body shall by resolution, on or before July 1, 1982, and on or before July 1 of each year thereafter adjust and uniformly fix the salaries of the county treasurer, county clerk, county assessor, county school superintendent, county sheriff, and the clerk of the district court; the county auditor (if there is one); and the county surveyor (if he receives a salary) for cost-of-living increase by adding to the annual salary computed under 7-4-2503 an increment calculated by applying to the annual salary established by 7-4-2503(1) plus previous cost-of-living increments, 70% of the last previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana may in the future recognize as the successor to that index. The county governing body may, however, for all or the remainder of each fiscal year, in conjunction with setting salaries for the same action on the salaries of justices of the peace (if applicable), the county governing body, county attorney, and coroner, set the salary at the prior fiscal year level if that level is lower than the level required by this subsection. The cost-of-living increment for the fiscal year beginning July 1, 1983, and for each subsequent fiscal year shall be added to all cost-of-living increments granted for previous years unless salaries were set for the fiscal year at the level of salaries received in the prior fiscal year. In such case the cost-of-living increment that would have been received for such fiscal year, computed on the prior fiscal year, may not be added to previous increments.

(2) If the application of 7-4-2503 does not qualify a county official for a salary increase of at least 7% on July 1, 1981, his salary on that date shall

be increased by an amount sufficient to provide him total salary equal to 7% more than during the previous year.

(3) The county governing body shall by resolution, prior to July 1 of each year, establish the salary of the coroner and may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in subsection (1), set the salary at the prior fiscal year level. The salary must be in effect upon the first day of each ensuing fiscal year.

History: En. Sec. 1, Ch. 306, L. 1973; R.C.M. 1947, 25-609.1; amd. Sec. 10, Ch. 443, L. 1979; amd. Sec. 2, Ch. 459, L. 1979; amd. Sec. 3, Ch. 518, L. 1981; amd. Sec. 25, Ch. 575, L. 1981; amd. Sec. 5, Ch. 12, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: In (1) inserted second sentence, and following "previous years" inserted remainder of subsection; and in (3) following "coroner" inserted remainder of first sentence.

Effective Date: The 1986 amendment was effective July 3, 1986.

1981 Amendments: Chapter 518 rewrote entire section to provide for cost-of-living increments. For former text see sec. 10, Ch. 443, L. 1979, and sec. 2, Ch. 459, L. 1979. For language of composite section, see 7-4-2504, MCA 1979.

Chapter 575 deleted "(if he receives a salary)" after "county coroner" in two places. Chapter 518 also deleted this language.

Cross-References

Judicial salaries not to be diminished during term of office, Art. VII, sec. 7, Mont. Const.

Salaries for Justice of the Peace, 3-10-207.

7-4-2510. Sheriff's department — longevity payments. Beginning on the date of his first anniversary of employment with the department and adjusted annually, a deputy sheriff or undersheriff is entitled to receive a longevity payment amounting to 1% of the minimum base annual salary for each year of service with the department, but years of service during any year in which the salary was set at the same level as the salary of the prior fiscal year may not be included in any calculation of longevity increases. This payment shall be made in equal monthly installments.

History: En. Sec. 5, Ch. 603, L. 1981; amd. Sec. 6, Ch. 12, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: Following "service with the department" inserted remainder of first sentence.

Effective Date: The 1986 amendment was effective July 3, 1986.

CHAPTER 6

FINANCIAL ADMINISTRATION AND TAXATION

Part 3

Local Government Block Grant Program

7-6-302. Local government block grant account created — source of funds. (1) There is a local government block grant account within the state special revenue fund.

(2) Funds in this account, to the extent they are available, must be used to provide payments from the local government block grant program to eligible jurisdictions.

(3) Thirty-three and one-third percent of the oil severance tax collected under the provisions of 15-36-101 and all funds appropriated to the account must be deposited in the account.

History: En. Sec. 2, Ch. 708, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 1, Ch. 30, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: In (2) inserted "to the extent they are available".

Effective Date: The 1986 amendment was effective July 16, 1986.

1983 Amendment: In (1), substituted "state special revenue fund" for "earmarked revenue fund".

7-6-303. Local government block grant program. (1) The department of commerce shall administer the local government block grant program and shall, to the extent they are available, distribute funds from the local government block grant account.

(2) The local government block grant program is comprised of three parts:

(a) a general purpose block grant for municipalities, counties, school districts, and other jurisdictions;

(b) a general services block grant for counties; and

(c) a general services block grant for municipalities.

History: En. Sec. 3, Ch. 708, L. 1983; amd. Sec. 2, Ch. 30, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: In (1) inserted "shall, to the extent they are available".

Effective Date: The 1986 amendment was effective July 16, 1986.

7-6-304. Division of block grant funds. The division of funds within the local government block grant account is as follows:

(1) Except as provided in 7-6-309(1), the general purpose block grant for municipalities, counties, school districts, and other jurisdictions must be funded, before any other distributions are made from the account, in an amount sufficient to cover the reimbursements required by 61-3-536, to the extent funds are available.

(2) (a) The general services block grant for counties must be funded from a percentage of the remaining funds deposited in the account equal to the ratio of the unincorporated population to the state population.

(b) The general services block grant for municipalities must be funded from a percentage of the remaining funds deposited in the account equal to the ratio of the incorporated population to the total state population.

History: En. Sec. 4, Ch. 708, L. 1983; amd. Sec. 3, Ch. 30, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: At end of (1) inserted "to the extent funds are available".

Effective Date: The 1986 amendment was effective July 16, 1986.

7-6-305. Distribution of general purpose block grant funds. The general purpose block grant for municipalities, counties, school districts, and other jurisdictions must be distributed, to the extent funds are available, by the state to counties pursuant to 61-3-536 and by counties to other jurisdictions pursuant to 61-3-509.

History: En. Sec. 5, Ch. 708, L. 1983; amd. Sec. 4, Ch. 30, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: Inserted "to the extent funds are available".

Effective Date: The 1986 amendment was effective July 16, 1986.

7-6-306. Distribution of general services block grant funds to counties. Funds in the general services block grant for counties must be distributed, to the extent funds are available, as follows:

(1) One-half of each county's share is determined by the ratio of the county's population to the total county population in the state.

(2) The remaining one-half is distributed according to the following formula where CMV = average mill value per capita of all counties; IMV = individual county mill value per capita; ICP = individual county population; CG = ½ total county grant:

$$\frac{CMV}{IMV} \quad X \quad ICP \quad = \text{county tax base factor (TBF)}$$

$$CG \quad X \quad \frac{\text{individual county TBF}}{\text{sum of all county TBFs}} \quad = \tfrac{1}{2} \text{ individual county share}$$

History: En. Sec. 6, Ch. 708, L. 1983; amd. Sec. 5, Ch. 30, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: In introduction inserted "to the extent funds are available".

Effective Date: The 1986 amendment was effective July 16, 1986.

7-6-309. Disposition and use of funds. Disbursements from the local government block grant account shall be made as follows:

(1) On October 1, 1983, a disbursement must be made from the general services block grant that is the lesser of:

(a) $2 million; or

(b) one-third of the total general fund appropriation to the account for the biennium ending June 30, 1985.

(2) On March 1, 1984, and March 1 of each succeeding year the reimbursement required by 61-3-536 must be distributed, to the extent funds are available.

(3) On June 30, 1984, a disbursement must be made from the general services block grants for municipalities and counties that equals the amount which is the lesser of the difference between the account balance on that date and:

(a) $3 million dollars; or

(b) one-half of the total general fund appropriation to the account for the biennium ending June 30, 1985.

(4) On June 30, 1985, and June 30 of each succeeding year, all funds remaining in the account must be distributed.

(5) The funds distributed by this part may be used for any purpose authorized by law.

History: En. Sec. 9, Ch. 708, L. 1983; amd. Sec. 6, Ch. 30, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: In (2) inserted "to the extent funds are available".

Effective Date: The 1986 amendment was effective July 16, 1986.

Part 23

County Budget Law

7-6-2321. Fixing of tax levy. (1) On the second Monday in August and after the approval and adoption of the final budget, the board of county

commissioners shall fix the tax levy for each fund at a rate which will raise the amount set out in the budget as the amount necessary to be raised by tax levy for the fund during the current fiscal year. The taxable valuation of the county for the current fiscal year shall be the basis for determining the amount of the tax levy for each fund. Each tax levy shall be at a rate no higher than is required on that basis, without including any amount for anticipated tax delinquency, to produce the amount set out in the budget, without including any amount for anticipated tax delinquency, as being the amount to be raised by tax levy.

(2) The tax levy shall be made in the manner provided by 15-10-201.

History: En. Sec. 4, Ch. 148, L. 1929; re-en. Sec. 4613.4, R.C.M. 1935; amd. Sec. 1, Ch. 98, L. 1937; amd. Sec. 1, Ch. 220, L. 1963; amd. Sec. 1, Ch. 178, L. 1969; amd. Sec. 1, Ch. 5, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 261, L. 1974; amd. Sec. 66, Ch. 348, L. 1974; amd. Sec. 25, Ch. 213, L. 1975; R.C.M. 1947, 16-1904(6); amd. Sec. 1, Ch. 726, L. 1985; amd. Sec. 3, Ch. 26, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: In (1) at beginning of second sentence deleted "Except as provided in subsection (2)"; and deleted former (2) that read: "(2) (a) The taxable value of property which is the subject of a protest and which remains under protest on the first Monday in August of the current year may be excluded from the county's taxable valuation if the taxable value of such property remaining under protest exceeds 5% of the county's taxable valuation in computing mill levies to fund the amounts necessary to be raised under the provisions of subsection (1) or fund amounts necessary under any other provision of law providing for a levy on the taxable valuation of the county or any district or portion thereof.

(b) If tax money that was collected on property excluded under subsection (2)(a) is not required to be refunded to the taxpayer from the protest fund at the conclusion of a protest proceeding, such money must be used to reduce subsequent property tax levies of the appropriate funds or levies from which it was previously withheld in protest, except for statewide education and university mill levies. The county shall calculate such levies by crediting the revenue from released protest funds directly to the revenue section of the budget and not to the cash reserves. If the crediting of such revenue reduces to zero the amount necessary to be raised by tax levy, the county treasurer shall refund any excess protest fund revenue to the taxpayers. If a taxpayer is delinquent in the payment of prior taxes, the county may offset the delinquency rather than make a refund. A copy of the calculations made in fixing the tax levies under this subsection and calculations of any refunds must be delivered to the legislative auditor, the office of public instruction, and the department of revenue."

Effective Date — Applicability: The 1986 amendment was effective July 15, 1986, and applies to any appeal or tax paid under protest after that date.

1985 Amendment: In (1) at beginning of second sentence inserted exception clause; and inserted (2) (now deleted).

Part 42

Municipal Budget Law

7-6-4232. Fixing of tax levy. (1) On the second Monday in August and after the approval and adoption of the final budget, the council shall fix the tax levy for each fund at a rate, not exceeding limits prescribed by law, which will raise the amount set out in the budget as the amount necessary to be raised by tax levy for that fund during the current fiscal year. The taxable valuation of the city for the current fiscal year shall be the basis for determining the amount of the tax levy for each fund, and each tax levy shall be at a rate no higher than is required on that basis, without including any amount for anticipated tax delinquency, to raise the amount set out in the budget.

(2) If the council considers that a levy made for a bond sinking or interest fund will not provide a sufficient amount to pay all bond principal and interest becoming due during the current fiscal year or within 6 months after the current fiscal year because of anticipated tax delinquency, the council may fix the levy at a rate it considers necessary to raise the amount for making the payments of principal and interest over and above the anticipated tax delinquency.

(3) Each levy shall be made in the manner provided by 15-10-201.

History: En. Sec. 6, Ch. 121, L. 1931; re-en. Sec. 5083.6, R.C.M. 1935; amd. Sec. 1, Ch. 129, L. 1941; amd. Sec. 51, Ch. 348, L. 1974; amd. Sec. 14, Ch. 213, L. 1975; R.C.M. 1947, 11-1406(5); amd. Sec. 31, Ch. 252, L. 1979; amd. Sec. 2, Ch. 726, L. 1985; amd. Sec. 4, Ch. 26, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: In (1) at beginning of second sentence deleted "Except as provided in subsections (2) and (4)"; and deleted former (4) that read: "(4) (a) The taxable value of property which is the subject of a protest and which remains under protest on the first Monday in August of the current year may be excluded from the city's taxable valuation if the taxable value of such property remaining under protest exceeds 5% of the city's taxable valuation in computing mill levies to fund the amounts necessary to be raised under the provisions of subsection (1).

(b) If tax money that was collected on property excluded under subsection (4)(a) is not required to be refunded to the taxpayer from the protest fund at the conclusion of a protest proceeding, such money shall be used to reduce subsequent property tax levies of the appropriate funds or levies from which it was previously withheld in protest. The city shall calculate such levies by crediting the revenue from released protest funds directly to the revenue section of the budget and not to the cash reserves. If the crediting of such revenue reduces to zero the amount necessary to be raised by tax levy, the city shall refund any excess protest fund revenue to the taxpayers. If a taxpayer is delinquent in the payment of prior taxes, the city may offset the delinquency rather than make a refund. A copy of the calculations made in fixing the tax levies under this subsection and calculations of any refunds must be delivered to the legislative auditor, the office of public instruction, and the department of revenue."

Effective Date — Applicability: The 1986 amendment was effective July 15, 1986, and applies to any appeal or tax paid under protest after that date.

1985 Amendment: In (1) at beginning of second sentence inserted exception clause; and inserted (4) (now deleted).

Part 44

Municipal Taxation

7-6-4453. Certain special mill levies also available. (1) The all-purpose mill levy shall not and may not include the levies imposed for bonded indebtedness, to pay judgments or tax protest refunds, or for special improvement district revolving funds of municipalities, which levies may be made in addition to the all-purpose levy, as provided in subsection (2). Sections 7-6-4451 through 7-6-4455 shall not be construed as repealing those statutes providing for multiple separate levies.

(2) Extraordinary levies otherwise authorized to pay for bonded indebtedness, judgments, tax protest refunds, or special improvement district revolving funds may be made by such municipalities in addition to such all-purpose levy provided for in 7-6-4451 through 7-6-4455.

(3) In a third-class city or town, the all-purpose mill levy may not include the special tax levy for the firefighters' disability and pension fund provided for in 19-11-503. This special tax levy must be made in addition to the all-purpose mill levy.

History: Ap. p. Sec. 1, Ch. 82, L. 1965; amd. Sec. 1, Ch. 226, L. 1969; amd. Sec. 1, Ch. 375, L. 1971; Sec. 84-4701.1, R.C.M. 1947; Ap. p. 84-4701.6 by Sec. 1, Ch. 145, L. 1967; amd. Sec.

5, Ch. 375, L. 1971; Sec. 84-4701.6, R.C.M. 1947; Ap. p. Sec. 2, Ch. 82, L. 1965; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 375, L. 1971; amd. Sec. 57, Ch. 566, L. 1977; Sec. 84-4701.2, R.C.M. 1947; R.C.M. 1947, 84-4701.1(part), 84-4701.2(part), 84-4701.6; amd. Sec. 1, Ch. 372, L. 1983; amd. Sec. 2, Ch. 26, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: In (1) after "to pay judgments" inserted "or tax protest refunds"; and in (2) after "judgments," inserted "tax protest refunds".

Effective Date — Applicability: The 1986 amendment was effective July 15, 1986, and applies to any appeal or tax paid under protest after that date.

1983 Amendment: Inserted (3).

CHAPTER 32

LAW ENFORCEMENT

Part 21

Sheriff's Department

7-32-2123. Appointment of jailer. A sheriff who operates a county jail pursuant to 7-32-2121 may appoint deputy sheriffs or nonsworn individuals as jailers. A nonsworn individual appointed as a jailer need not receive the same salary as a deputy sheriff.

History: En. Sec. 1, Ch. 75, L. 1905; re-en. Sec. 3119, Rev. C. 1907; amd. Sec. 2, Ch. 93, L. 1909; amd. Sec. 1, Ch. 119, L. 1909; re-en. Sec. 4875, R.C.M. 1921; re-en. Sec. 4875, R.C.M. 1935; amd. Sec. 1, Ch. 69, L. 1953; R.C.M. 1947, 16-3701(part); amd. Sec. 4, Ch. 263, L. 1979; amd. Sec. 8, Ch. 447, L. 1985; amd. Sec. 1, Ch. 16, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: Substituted present language for "A sheriff who operates a county jail may appoint two deputies in counties of the first, second, or third class and one deputy in counties of the fourth, fifth, sixth, or seventh class who shall act as jailer and receive the same salary as other deputy sheriffs."

Effective Date: The 1986 amendment was effective July 10, 1986.

1985 Amendment: At beginning substituted "A sheriff who operates a county jail" for "The sheriff".

TITLE 15

TAXATION

CHAPTER 1

TAX ADMINISTRATION

Part 4

Protest Payments, Actions to Recover, and Alternative Remedies

15-1-402. Payment of taxes under protest — action to recover. (1) The person upon whom a tax or license fee is being imposed may proceed

under 15-1-406 or may, before the tax or license fee becomes delinquent, pay under written protest that portion of the tax or license fee protested. The payment must:

(a) be made to the officer designated and authorized to collect it;

(b) specify the grounds of protest; and

(c) not exceed the difference between the payment for the immediately preceding tax year and the amount owing in the tax year protested unless a different amount results from the specified grounds of protest, which grounds may include but are not limited to changes in assessment due to reappraisal under 15-7-111.

(2) After having exhausted the administrative appeals available under Title 15, chapters 2 and 15, a person or his legal representative may bring an action in any court of competent jurisdiction against the officers to whom said tax or license fee was paid or against the county or municipality in whose behalf the same was collected and the department of revenue.

(3) Both the officers to whom the tax or license fee was paid or the county or municipality in whose behalf the same was collected and the department of revenue must be served with timely summons and complaint within the time prescribed.

(4) Any action instituted to recover any such portions of tax or license fee paid under protest shall be commenced and summons timely served within 60 days after the date of the final decision of the state tax appeal board.

(5) When any protested tax or license fee is payable in installments, then any subsequent installment portion considered unlawful by the state tax appeal board need not be paid and no action or suit need be commenced to recover the same, but the determination of the action or suit commenced to recover the first installment portion paid under protest shall determine the right of the party paying such subsequent installment to have the same or any part thereof refunded to him or the right of the taxing authority to collect a subsequent installment not paid by the taxpayer plus interest from the date the subsequent installment was due.

(6) All portions of taxes and license fees paid under protest to a county or municipality shall be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as a protest fund and shall be retained in such protest fund until the final determination of any action or suit to recover the same unless released at the request of the county, municipality, or other local taxing jurisdiction pursuant to subsection (7). Nothing contained herein prohibits the investment of the money of this fund in the state unified investment program or in any manner provided in Title 7, chapter 6. The provision creating the special protest fund does not apply to any payments made under protest directly to the state.

(7) The governing board of a taxing jurisdiction affected by the payment of taxes under protest in the second and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled, except the amount paid by the taxpayer in the first year of the protest. The decision in a previous year of a taxing jurisdiction to leave protested taxes in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled, except the first-year protest amount.

(8) (a) If no action is commenced within the time herein specified or if such action is commenced and finally determined in favor of the county or municipality or treasurer thereof, the amount of the protested portions of the tax or license fee shall be taken from the protest fund and deposited to the credit of the fund or funds to which the same property belongs, less a pro rata deduction for the costs of administration of the protest fund and related expenses charged the local government units.

(b) If such action is finally determined adversely to a county or municipality or the treasurer thereof, then the treasurer shall, upon receiving a certified copy of the final judgment in said action from the state tax appeal board, or from the district or supreme court, as appropriate, if the final action of the state tax appeal board is appealed in the time prescribed, refund to the person in whose favor such judgment is rendered the amount of such protested portions of the tax or license fee deposited in the protest fund, and not released pursuant to subsection (7), as the person holding such judgment is entitled to recover, together with interest thereon at the rate of 6% a year from the date of payment under protest. If the amount retained in the protest fund is insufficient to pay all sums due the taxpayer, the treasurer shall apply the available amount first to tax repayment, then interest owed, and lastly to costs.

(c) If the protest action is decided adversely to a taxing jurisdiction and the amount retained in the protest fund is insufficient to refund the tax payments, interest, and costs to which the taxpayer is entitled and for which local government units are responsible, the treasurer shall bill and the taxing jurisdiction shall refund to the treasurer that portion of the taxpayer refund, including tax payments, interest, and costs, for which the taxing jurisdiction is proratably responsible.

(d) In satisfying the requirements of subsection (8)(c), the taxing jurisdiction is allowed not more than 1 year from the beginning of the fiscal year following a final resolution of the protest. The taxpayer is entitled to interest on the unpaid balance at the rate of 6% a year from the date of payment under protest until the date of final resolution of the protest and at the combined rate of the federal reserve discount rate quoted from the federal reserve bank in New York, New York, on the date of final resolution, plus four percentage points, from the date of final resolution of the protest until refund is made.

(9) A taxing jurisdiction may satisfy the requirements of this section by use of funds from one or more of the following sources:

(a) imposition of a property tax to be collected by a special tax protest refund levy;

(b) the general fund, except that amount generated by the all-purpose mill levy, or any other funds legally available to the governing body; and

(c) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the repayment of tax protests lost by the taxing jurisdiction. The governing body of a county, city, or school district is hereby authorized to issue such bonds pursuant to procedures established by law. Property taxes may be levied to amortize such bonds, provided the levy for payment of any such bonds may not exceed, in the aggregate, 10 mills annually.

History: **En. 4024, Pol. C. 1895; amd. Sec. 1, Ch. 108, L. 1905; re-en. Sec. 2742, Rev. C. 1907; amd. Sec. 1, Ch. 135, L. 1909; re-en. Sec. 2269, R.C.M. 1921; amd. Sec. 1, Ch. 142, L. 1925;**

re-en. Sec. 2269, R.C.M. 1935; amd. Sec. 1, Ch. 204, L. 1955; amd. Sec. 151, Ch. 516, L. 1973; amd. Sec. 1, Ch. 348, L. 1977; amd. Sec. 1, Ch. 394, L. 1977; R.C.M. 1947, 84-4502; amd. Sec. 1, Ch. 281, L. 1979; amd. Sec. 1, Ch. 680, L. 1979; amd. Sec. 6, Ch. 463, L. 1981; amd. Sec. 4, Ch. 501, L. 1981; amd. Sec. 1, Ch. 26, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: Inserted (1)(c); in (6) after "designated as a protest fund and shall be" deleted "invested in interest-bearing deposits in local banks or savings and loan associations and", at end of first sentence inserted "unless released at the request of the county, municipality, or other local taxing jurisdiction pursuant to subsection (7)", and at end of second sentence inserted "or in any manner provided in Title 7, chapter 6"; inserted (7); at end of (8)(a) inserted final phrase beginning "less a pro rata deduction . . ."; in (8)(b) after "protested portions of the tax or license fee" substituted "deposited in the protest fund, and not released pursuant to subsection (7)" for "with costs of suit and interest at the rate currently paid on short-term interest-bearing time deposits in banks in the county or 5% a year, whichever is greater, from the date of payment under protest. If such action was commenced for the purpose of recovering the first installment portions of any such tax or license fee and any subsequent installment thereof has been paid under protest as herein provided, then the county treasurer shall, at the time of refunding the amount of such first installment required by such judgment, also refund such portion of any subsequent installment", and inserted last sentence; and inserted (8)(c), (8)(d), and (9).

Effective Date — Applicability: The 1986 amendment was effective July 15, 1986, and applies to any appeal or tax paid under protest after that date.

1981 Amendments: Chapter 463 inserted "may proceed under 15-1-406 or" after "The person upon whom a tax or license fee is being imposed" at the beginning of (1).

Chapter 501 rewrote the entire section. For former text see sec. 1, Ch. 680, L. 1979, and sec. 1, Ch. 281, L. 1979.

Composite Section: Chapter 463, L. 1981, allows a taxpayer to pursue a declaratory judgment proceeding to test the validity of a tax levy in lieu of proceeding under 15-1-402.

Chapter 501, L. 1981, rewrote 15-1-402 making it necessary for the Code Commissioner to insert the amendatory language of Ch. 463, in the most appropriate place within the rewritten language of Ch. 501.

CHAPTER 6

PROPERTY SUBJECT TO TAXATION

Part 1

Classification

15-6-144. Class fourteen property — description — taxable percentage. (1) Class fourteen property includes all improvements on land that is eligible for valuation, assessment, and taxation as agricultural land under 15-7-202(2). Class fourteen property includes 1 acre of real property beneath the agricultural improvements. The 1 acre shall be valued at market value.

(2) Class fourteen property is taxed at 80% of the taxable percentage applicable to class four property.

History: En. Sec. 2, Ch. 699, L. 1985; amd. Sec. 2, Ch. 35, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: In first sentence of (1) substituted "land that is eligible for valuation, assessment, and taxation as agricultural land under 15-7-202(2)" for "agricultural land, as defined in 15-7-202".

Effective Date: The 1986 amendment was effective July 23, 1986.

Code Commissioner Correction: Reference throughout section to "class thirteen" was changed to "class fourteen" due to the enactment of a class thirteen property classification for timberland by sec. 2, Ch. 681, L. 1985.

15-6-145. Class fifteen property — description — taxable percentage. (1) Class fifteen property includes all railroad transportation property as described in the Railroad Revitalization and Regulatory Reform Act of 1976 as it read on January 1, 1986.

(2) For the taxable year beginning January 1, 1986, and for each taxable year thereafter, class fifteen property is taxed at the percentage rate "R", to be determined by the department as provided in subsection (3), or 12%, whichever is less.

(3) R = A/B where:

(a) A is the total statewide taxable value of all commercial property, except class fifteen property, as commercial property is described in 15-1-101(1)(d), including class 1 and class 2 property; and

(b) B is the total statewide market value of all commercial property, except class fifteen property, as commercial property is described in 15-1-101(1)(d), including class 1 and class 2 property.

(4) (a) For the taxable year beginning January 1, 1986, and for every taxable year thereafter, the department shall conduct a sales assessment ratio study of all commercial and industrial real property and improvements. The study must be based on:

(i) assessments of such property as of January 1 of the year for which the study is being conducted; and

(ii) a statistically valid sample of sales using data from realty transfer certificates filed during the same taxable year or from the immediately preceding taxable year, but only if a sufficient number of certificates is unavailable from the current taxable year to provide a statistically valid sample.

(b) The department shall determine the value-weighted mean sales assessment ratio "M" for all such property and reduce the taxable value of property described in subsection (4) only, by multiplying the total statewide taxable value of property described in subsection (4) by "M" prior to calculating "A" in subsection (3).

(c) The adjustment referred to in subsection (4)(b) will be made beginning January 1, 1986, and in each subsequent tax year to equalize the railroad taxable values.

(5) For the purpose of complying with the Railroad Revitalization and Regulatory Reform Act of 1976, as it read on January 1, 1986, the rate "R" referred to in this section is the equalized average tax rate generally applicable to commercial and industrial property, except class fifteen property, as commercial property is defined in 15-1-101(1)(d).

History: En. Sec. 5, Ch. 743, L. 1985; amd. Sec. 1, Ch. 7, Sp. L. March 1986; amd. Sec. 1, Ch. 24, Sp. L. June 1986.

Compiler's Comments

June 1986 Amendment: At end of (2) inserted "or 12%, whichever is less".

March 1986 Amendment: Deleted former (1)(b) that read: "all airline transportation property as described in the Tax Equity and Fiscal Responsibility Act of 1982 as it read on January 1, 1986"; in (3) inserted "except class fifteen property" in two places; in (4)(c) deleted "and airline" before "taxable values"; and in (5) after "1976" deleted "and the Tax Equity and Fiscal Responsibility Act of 1982", substituted "it" for "they", and after "industrial property" inserted "except class fifteen property".

Effective Date — Applicability Dates — Code Commissioner Correction: This section is effective January 1, 1986 (sec. 12, Ch. 743, L. 1985).

The March 1986 and June 1986 amendments apply retroactively to tax years beginning after December 31, 1985 (sec. 8, Ch. 7, Sp. L. March 1986, and sec. 3, Ch. 24, Sp. L. June 1986).

In (1) and (2), the Code Commissioner changed "class thirteen" to "class fifteen" because Ch. 681, L. 1985, and Ch. 699, L. 1985, also enacted class thirteen property classifications.

15-6-148. Class eighteen property — description — taxable percentage. (1) Class eighteen property includes all nonproductive patented mining claims outside the limits of an incorporated city or town held by an owner for the ultimate purpose of developing the mineral interests on the property. Class eighteen does not include any property that is used for residential, recreational as described in 70-16-301, or commercial as defined in 15-1-101, purposes, or if the surface is being used for other than mining purposes or has a separate and independent value for such other purposes.

(2) Improvements to class eighteen property that would not disqualify the parcel from designation as class eighteen property are taxed as otherwise provided in this title, including that portion of the land upon which such improvements are located and which is reasonably required for the use of such improvements.

(3) Class eighteen property must be valued as if such land were devoted to agricultural grazing use and is taxed at 30% of its value.

History: En. Sec. 1, Ch. 34, Sp. L. June 1986.

Compiler's Comments

Applicability: Section 6, Ch. 34, Sp. L. June 1986, provided: "This act applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1985."

15-6-149. Class nineteen property — description — taxable percentage. (1) Class nineteen property includes parcels of nonproductive real property containing less than 20 acres that are precluded from being developed for residential, commercial, or industrial purposes because of subdivision or zoning laws, regulations, or ordinances or that are precluded from being so developed for other reasons.

(2) Improvements to class nineteen property are taxed as class four property.

(3) Class nineteen property is taxed at 2% of its market value.

History: En. Sec. 3, Ch. 35, Sp. L. June 1986.

Compiler's Comments

Applicability: Section 10, Ch. 35, Sp. L. June 1986, provided: "This act applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1985."

Temporary Procedures for 1986 Tax Year: Sections 7 and 8, Ch. 35, Sp. L. June 1986, provided: "Application deadline for reduction in 1986 valuation. Notwithstanding the provisions of 15-15-102, the application deadline for reduction in 1986 taxable valuations is August 1, 1986, or 15 days after receipt by the taxpayer of a revised notice of classification and appraisal, whichever is later.

Land valued in excess of average county land value — renotification to taxpayer. For persons paying taxes on real property containing more than 5 acres but less than 20 acres, the department of revenue shall notify each taxpayer whose land value for 1986 due to reclassification to class four by application of 15-7-202 exceeds the average value per acre for such land in the taxpayer's county. The new notice must fully inform the taxpayer as to the reasons for the new notice, including the cause of the increase in value, the right to appeal to the county tax appeal board, and the extension of time for appeal."

15-6-153. Application for classification as class eighteen property. A person applying for classification of property as class eighteen property shall make an affidavit to the department of revenue, on a form provided by the department without cost, stating:

(1) the fact that the mining claim is not presently being used for mining purposes but is being held for that use;

(2) that the mineral interests of the mining claim have not been depleted; and

(3) such other information as the department may require to determine an applicant's eligibility and to determine if the surface is being used for other than mining purposes or has a separate and independent value for such other purposes.

History: En. Sec. 2, Ch. 34, Sp. L. June 1986.

Compiler's Comments

Applicability: Section 6, Ch. 34, Sp. L. June 1986, provided: "This act applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1985."

15-6-154. Application for classification as class nineteen property. A person applying for classification of property as class nineteen property shall make an affidavit to the department of revenue, on a form provided by the department without cost, stating:

(1) that the property is precluded from being developed for residential, commercial, or industrial purposes because of subdivision or zoning laws, regulations, or ordinances or for other reasons;

(2) what law, regulation, or ordinance or other reason precludes such use;

(3) what determinations, if any, by a governmental entity have been made to substantiate the application for classification as class nineteen property; and

(4) such other information as is relevant to the application or as may be required by the department.

History: En. Sec. 4, Ch. 35, Sp. L. June 1986.

Compiler's Comments

Applicability: Section 10, Ch. 35, Sp. L. June 1986, provided: "This act applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1985."

Temporary Procedures for 1986 Tax Year: Sections 7 and 8, Ch. 35, Sp. L. June 1986, provided: "Application deadline for reduction in 1986 valuation. Notwithstanding the provisions of 15-15-102, the application deadline for reduction in 1986 taxable valuations is August 1, 1986, or 15 days after receipt by the taxpayer of a revised notice of classification and appraisal, whichever is later.

Land valued in excess of average county land value — renotification to taxpayer. For persons paying taxes on real property containing more than 5 acres but less than 20 acres, the department of revenue shall notify each taxpayer whose land value for 1986 due to reclassification to class four by application of 15-7-202 exceeds the average value per acre for such land in the taxpayer's county. The new notice must fully inform the taxpayer as to the reasons for the new notice, including the cause of the increase in value, the right to appeal to the county tax appeal board, and the extension of time for appeal."

CHAPTER 7

APPRAISAL

Part 1

General Methods

15-7-102. Notice of classification and appraisal to owners — appeals. (1) It shall be the duty of the department of revenue to cause to be mailed to each owner and purchaser under contract for deed a notice of the classification of the land owned or being purchased by him and the appraisal of the improvements thereon only if one or more of the following

changes pertaining to the land or improvements have been made since the last notice:

(a) change in ownership;

(b) change in classification;

(c) change in valuation; or

(d) addition or subtraction of personal property affixed to the land.

(2) The notice of classification and appraisal provided by the department under subsection (1) must be on a standardized form adopted by the department containing sufficient information in a comprehensible manner designed to fully inform the taxpayer as to the classification and appraisal of his property and of changes over the prior tax year.

(3) If the owner of any land and improvements is dissatisfied with the appraisal or classification of his land or improvements, he may submit his objection in writing to the department's agent. The department shall give reasonable notice to such taxpayer of the time and place of hearing and hear any testimony or other evidence which the taxpayer may desire to produce at such time and afford the opportunity to other interested persons to produce evidence at such hearing. Thereafter, the department shall determine the true and correct appraisal and classification of such land or improvements and forthwith notify the taxpayer of its determination. In the notification, the department must state its reasons for revising the classification or appraisal. When so determined, the land shall be classified and improvements appraised in the manner ordered by the department.

(4) Whether a hearing as provided in subsection (3) is held or not, the department or its agent may not adjust an appraisal or classification upon taxpayer's objection unless:

(a) the taxpayer has submitted his objection in writing; and

(b) the department or its agent has stated its reason in writing for making the adjustment.

(5) A taxpayer's written objection to a classification or appraisal and the department's notification to the taxpayer of its determination and the reason for that determination are public records. Each county appraiser shall make such records available for inspection during regular office hours.

(6) If any property owner shall feel aggrieved at the classification and/or the appraisal so made by the department, he shall have the right to appeal to the county tax appeal board and then to the state tax appeal board, whose findings shall be final subject to the right of review in the proper court or courts.

History: En. Sec. 5, Ch. 191, L. 1957; amd. Sec. 17, Ch. 405, L. 1973; R.C.M. 1947, 84-429.11; amd. Sec. 3, Ch. 710, L. 1979; amd. Sec. 1, Ch. 105, L. 1983; amd. Sec. 11, Ch. 526, L. 1983; amd. Sec. 3, Ch. 29, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: Inserted (2).

Effective Date: The 1986 amendment was effective July 16, 1986.

Preamble: The preamble to Ch. 29, Sp. L. June 1986, provided: "WHEREAS, the Department of Revenue should carry the burden of substantiating exceptional increases in assessments made under section 15-7-111, MCA, before placement on assessment books; and

WHEREAS, each property taxpayer in the state should be properly notified regarding the classification and value of the taxpayer's property for property tax purposes; and

WHEREAS, the lack of a standardized property tax classification and appraisal notice results in a variety of notices being sent by the counties with a wide range in the clarity of the notices; and

WHEREAS, incomplete or incomprehensible tax classification and appraisal notices create

much confusion and misunderstanding regarding the property tax system and, in particular, the property revaluation process as implemented in the 1986 tax year.

THEREFORE, the Legislature of the State of Montana finds it appropriate to direct the Department of Revenue to submit assessments made under section 15-7-111, MCA, with exceptional increases for review by the county tax appeal boards before placement on assessment books, to adopt a standardized property tax classification and appraisal notice and to send such notice to taxpayers with exceptional increases in 1986 assessments, and to extend the application deadline for reduction in 1986 valuations."

1986 Assessment Review Procedure: Sections 1, 4, and 5 of Ch. 29, Sp. L. June 1986, provided a special procedure for review of 1986 assessments. Section 1 provided for review in the aggregate, by the county tax appeal boards, of assessments that exceeded the 1985 assessment by 180% or more. Section 4 provided for renotification to taxpayers whose 1986 assessment on class four property increased as a result of reappraisal of class four property by 180% or more when compared with 1985. Section 5 extended the application deadline for reduction in 1986 valuations to August 1, 1986, or 15 days after receipt by the taxpayer of a revised notice of classification and appraisal, whichever is later.

1983 Amendments: Chapter 105, at end of (1), inserted clause beginning "only if one or more of the following changes . . ." relating to certain changes and inserted (1)(a) through (1)(d).

Chapter 526, in (1), after "owner" inserted "and purchaser under contract for deed"; and after "land owned" inserted "or being purchased".

Part 2
Greenbelt Appraisal

15-7-202. Eligibility of land for valuation as agricultural. (1) Contiguous parcels of land totaling 20 acres or more under one ownership shall be eligible for valuation, assessment, and taxation as agricultural land each year that none of the parcels is devoted to a commercial or industrial use.

(2) Contiguous or noncontiguous parcels of land totaling less than 20 acres under one ownership that are actively devoted to agricultural use shall be eligible for valuation, assessment, and taxation as herein provided each year the parcels meet any of the following qualifications:

(a) the parcels produce and the owner or the owner's agent, employee, or lessee markets not less than $1,500 in annual gross income from the raising of livestock, poultry, field crops, fruit, and other animal and vegetable matter for food or fiber; or

(b) the parcels would have met the qualification set out in subsection (2)(a) were it not for independent intervening causes of production failure beyond the control of the producer or marketing delay for economic advantage, in which case proof of qualification in a prior year will suffice.

(3) Parcels that do not meet the qualifications set out in subsections (1) and (2) shall not be classified or valued as agricultural if they are part of a platted subdivision that is filed with the county clerk and recorder in compliance with the Montana Subdivision and Platting Act.

(4) Land shall not be classified or valued as agricultural if it is subdivided with stated restrictions prohibiting its use for agricultural purposes.

(5) The grazing on land by a horse or other animals kept as a hobby and not as a part of a bona fide agricultural enterprise shall not be considered a bona fide agricultural operation.

(6) If land has been valued, assessed, and taxed as agricultural land in any year, it shall continue to be so valued, assessed, and taxed until the department reclassifies the property. A reclassification does not mean revaluation pursuant to 15-7-111.

(7) For the purposes of this part, growing timber is not an agricultural use. *(Subsection (6) (now (7)) terminates January 1, 1991—sec. 10, Ch. 681, L. 1985.)*

History: En. Sec. 4, Ch. 512, L. 1973; amd. Sec. 2, Ch. 56, L. 1974; amd. Sec. 1, Ch. 457, L. 1975; R.C.M. 1947, 84-437.2; amd. Sec. 1, Ch. 608, L. 1979; amd. Sec. 16, Ch. 693, L. 1979; amd. Sec. 4, Ch. 681, L. 1985; amd. Sec. 1, Ch. 699, L. 1985; amd. Sec. 1, Ch. 35, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: Inserted (1); in (2) near beginning, inserted "totaling less than 20 acres"; and in (3) substituted "subsections (1) and (2)" for "subsection (1)".

Effective Date: The 1986 amendment was effective July 23, 1986.

Temporary Procedures for 1986 Tax Year: Sections 7 and 8, Ch. 35, Sp. L. June 1986, provided: "Application deadline for reduction in 1986 valuation. Notwithstanding the provisions of 15-15-102, the application deadline for reduction in 1986 taxable valuations is August 1, 1986, or 15 days after receipt by the taxpayer of a revised notice of classification and appraisal, whichever is later.

Land valued in excess of average county land value — renotification to taxpayer. For persons paying taxes on real property containing more than 5 acres but less than 20 acres, the department of revenue shall notify each taxpayer whose land value for 1986 due to reclassification to class four by application of 15-7-202 exceeds the average value per acre for such land in the taxpayer's county. The new notice must fully inform the taxpayer as to the reasons for the new notice, including the cause of the increase in value, the right to appeal to the county tax appeal board, and the extension of time for appeal."

1985 Amendments: Chapter 681 deleted former (1)(a)(iii) that read: "it is used for growing timber, or"; and inserted (6) (now (7)). Amendment effective January 1, 1986, and terminates January 1, 1991 (sec. 10, Ch. 681, L. 1985).

Chapter 699 at the beginning of (1) (now (2)) substituted "Contiguous or noncontiguous parcels of land under one ownership that are" for "Land which is"; substituted present (1)(a) (now (2)(a)) for "the area of such land is not less than 5 contiguous acres when measured in accordance with provisions of 15-7-206, and it has been actively devoted to agriculture during the last growing season, and it continues to be actively devoted to agricultural use, which means:

(i) it is used to produce field crops including but not limited to grains, feed crops, fruits, vegetables; or

(ii) it is used for grazing; or

(iii) it is used for growing timber, or

(iv) it is in a cropland retirement program"; substituted present (1)(b) (now (2)(b)) for "it agriculturally produces for sale or home consumption the equivalent of 15% or more of the owners' annual gross income regardless of the number of contiguous acres in the ownership"; deleted former (1)(c) that read: "it is used to raise animals in confined areas for the production of food or fiber, including but not limited to livestock, feedlots, dairies, fish hatcheries, and poultry farms"; inserted (2) (now (3)) and (5) (now (6)); and made minor changes in phraseology.

CHAPTER 8

ASSESSMENT PROCEDURE

Part 1

General Provisions

15-8-111. Assessment — market value standard — exceptions. (1) All taxable property must be assessed at 100% of its market value except as provided in subsection (5) of this section and in 15-7-111 through 15-7-114.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) Except as provided in subsection (3), the market value of all motor trucks; agricultural tools, implements, and machinery; and vehicles of all

kinds, including but not limited to aircraft and boats and all watercraft, is the average wholesale value shown in national appraisal guides and manuals or the value of the vehicle before reconditioning and profit margin. The department of revenue shall prepare valuation schedules showing the average wholesale value when no national appraisal guide exists.

(3) The department of revenue or its agents may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property in 15-6-134 through 15-6-140 and 15-6-145 through 15-6-149, except:

(a) the wholesale value for agricultural implements and machinery is the loan value as shown in the Official Guide, Tractor and Farm Equipment, published by the national farm and power equipment dealers association, St. Louis, Missouri; and

(b) for agricultural implements and machinery not listed in the official guide, the department shall prepare a supplemental manual where the values reflect the same depreciation as those found in the official guide.

(4) For purposes of taxation, assessed value is the same as appraised value.

(5) The taxable value for all property in classes four through eleven and fifteen through nineteen is the percentage of market value established for each class of property in 15-6-134 through 15-6-141 and 15-6-145 through 15-6-149.

(6) The assessed value of properties in 15-6-131 through 15-6-133 is as follows:

(a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503.

(b) Properties in 15-6-132, under class two, are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(d) Properties in 15-6-143, under class thirteen, are assessed at 100% of the combined appraised value of the standing timber and grazing productivity of the land when valued as timberland.

(7) Land and the improvements thereon are separately assessed when any of the following conditions occur:

(a) ownership of the improvements is different from ownership of the land;

(b) the taxpayer makes a written request; or

(c) the land is outside an incorporated city or town.

(8) The taxable value of all property in 15-6-131 and classes two, three, and thirteen is the percentage of assessed value established in 15-6-131(2), 15-6-132, 15-6-133, and 15-6-143 for each class of property. *(Subsections (3)(a) and (3)(b) applicable to tax years beginning after December 31, 1985—sec. 4, Ch. 463, L. 1985. Subsection (6)(d) and references in (8) to class thirteen and 15-6-143 terminate January 1, 1991—sec. 10, Ch. 681, L. 1985.)*

History: En. Sec. 5, p. 76, L. 1891; re-en. Sec. 3690, Pol. C. 1895; re-en. Sec. 2502, Rev. C. 1907; re-en. Sec. 2001, R.C.M. 1921; Cal. Pol. C. Sec. 3627; re-en. Sec. 2001, R.C.M. 1935; amd.

Sec. 2, Ch. 512, L. 1973; amd. Sec. 1, Ch. 56, L. 1974; amd. Sec. 1, Ch. 209, L. 1975; amd. Sec. 1, Ch. 436, L. 1975; amd. Sec. 5, Ch. 498, L. 1977; amd. Sec. 21, Ch. 566, L. 1977; R.C.M. 1947, 84-401; amd. Sec. 11, Ch. 634, L. 1979; amd. Secs. 10, 13, Ch. 686, L. 1979; amd. Sec. 17, Ch. 693, L. 1979; amd. Sec. 66, Ch. 575, L. 1981; amd. Sec. 2, Ch. 578, L. 1981; amd. Sec. 3, Ch. 323, L. 1983; amd. Sec. 1, Ch. 463, L. 1985; amd. Sec. 6, Ch. 516, L. 1985; amd. Sec. 6, Ch. 681, L. 1985; amd. Sec. 7, Ch. 743, L. 1985; amd. Sec. 4, Ch. 7, Sp. L. March 1986; amd. Sec. 3, Ch. 34, Sp. L. June 1986; amd. Sec. 5, Ch. 35, Sp. L. June 1986.

Compiler's Comments

June 1986 Amendments — Composite Section: This section was amended by Ch. 34 and Ch. 35, Sp. L. June 1986, and a composite section was prepared by the Code Commissioner. Chapter 34 created a new class eighteen property, and Ch. 35 created a new class nineteen property. Both chapters included citations to these new classes.

Chapter 34 in (3) and (5) substituted "15-6-148" for "15-6-147"; and in (5) substituted "eighteen" for "seventeen".

Chapter 35 in (3) and (5) substituted "15-6-149" for "15-6-147"; and in (5) substituted "nineteen" for "seventeen".

The Code Commissioner has codified the references from Ch. 35 because they are inclusive of the references made by Ch. 34.

Applicability: Section 6, Ch. 34, Sp. L. June 1986, and section 10, Ch. 35, Sp. L. June 1986, provided: "This act applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1985."

March 1986 Amendment: In (3) and (5) substituted "and 15-6-145 through 15-6-147" for "15-6-145, and 15-6-146"; and in (5) substituted "and fifteen through seventeen" for "fifteen, and sixteen".

1985 Amendments: Chapter 463 in (2)(b) at beginning, inserted exception clause; and inserted (3)(a) and (3)(b).

Chapter 516 in (2)(b) near beginning, after "limited to", deleted "motorcycles". Amendment effective January 1, 1986 (sec. 50, Ch. 516, L. 1985).

Chapter 681 inserted (6)(d); and in (8), after "three" inserted "and thirteen" and after "15-6-133" inserted "and 15-6-143". Amendment effective January 1, 1986, and terminates January 1, 1991 (sec. 10, Ch. 681, L. 1985).

Chapter 743 in (3) inserted "15-6-145, and 15-6-146"; and in (5) inserted reference to classes fifteen and sixteen and inserted "15-6-145, and 15-6-146". Amendment effective January 1, 1986 (sec. 12, Ch. 743, L. 1985).

1983 Amendment: Deleted references to subsections of 15-6-131 in (3), (4) (now (5)), (5) (now (6)), (5)(a) (now (6)(a)), and (7) (now (8)).

1981 Amendments: Chapter 575 substituted "classes four through eleven" for "classes four through ten [class twenty, and class twenty-one]" in (4) (now (5)); deleted "[and 15-6-121]" at the end of (4) (now (5)); in (7) (now (8)), deleted "[and 15-6-120]" after "15-6-133".

Chapter 578 added subsection (2)(b).

15-8-112. Assessments to be made on classification and appraisal.

Compiler's Comments

Temporary Amendment — Not Codified: Section 2, Ch. 29, Sp. L. June 1986, amended 15-8-112 by inserting an exception clause referencing section 1 of the bill that only applied to the 1986 tax year. Section 1 and the amendment in section 2 were not codified because of their temporary nature.

1986 Assessment Review Procedure: Sections 1, 4, and 5 of Ch. 29, Sp. L. June 1986, provided a special procedure for review of 1986 assessments. Section 1 provided for review in the aggregate, by the county tax appeal boards, of assessments that exceeded the 1985 assessment by 180% or more. Section 4 provided for renotification to taxpayers whose 1986 assessment on class four property increased as a result of reappraisal of class four property by 180% or more when compared with 1985. Section 5 extended the application deadline for reduction in 1986 valuations to August 1, 1986, or 15 days after receipt by the taxpayer of a revised notice of classification and appraisal, whichever is later.

CHAPTER 10

PROPERTY TAX LEVIES

Part 2

Statement of Levies

15-10-202. Certification of taxable values and millage rates. At the time that the assessment roll is prepared and published, the department

of revenue shall certify to each taxing authority the taxable value within the jurisdiction of the taxing authority. The department shall also send to each taxing authority a written statement of its best estimate of the total assessed value of all new construction and improvements not included on the previous assessment roll and the value of deletions from the previous assessment roll. Exclusive of such new construction, improvements, and deletions, the department shall certify to each taxing authority a millage rate which will provide the same ad valorem revenue for each taxing authority as was levied during the prior year. For the purpose of calculating the certified millage, the department shall use 95% of the taxable value appearing on the roll, exclusive of properties appearing for the first time on the assessment roll.

History: En. 84-7202 by Sec. 2, Ch. 286, L. 1974; R.C.M. 1947, 84-7202; amd. Sec. 4, Ch. 726, L. 1985; amd. Sec. 5, Ch. 26, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: In third sentence after "deletions", deleted "and the taxable value of property which is the subject of a protest and which remains under protest on the first Monday in August of the current year if the taxable value of such property remaining under protest exceeds 5% of that taxing jurisdiction's taxable valuation, and if requested to do so by the county commissioners"; and deleted former (2) that read: "The county commissioners shall inform the department of revenue in writing by July 15 as to whether the county wishes to exclude protested values from the tax base for the purpose of calculating certified mill levies. The decision of the county commissioners shall apply to all taxing jurisdictions within the county."

Effective Date — Applicability: The 1986 amendment was effective July 15, 1986, and applies to any appeal or tax paid under protest after that date.

1985 Amendment: In third sentence, after "deletions", inserted "and the taxable value of property which is the subject of a protest and which remains under protest on the first Monday in August of the current year if the taxable value of such property remaining under protest exceeds 5% of that taxing jurisdiction's taxable valuation, and if requested to do so by the county commissioners" (now deleted); and inserted (2) (now deleted).

CHAPTER 15

PROPERTY TAX APPEALS

Part 1

County Tax Appeal Board

15-15-102. Application for reduction in valuation.

Compiler's Comments

Temporary Procedures for 1986 Tax Year: Sections 7 and 8, Ch. 35, Sp. L. June 1986, provided: "Application deadline for reduction in 1986 valuation. Notwithstanding the provisions of 15-15-102, the application deadline for reduction in 1986 taxable valuations is August 1, 1986, or 15 days after receipt by the taxpayer of a revised notice of classification and appraisal, whichever is later.

Land valued in excess of average county land value — renotification to taxpayer. For persons paying taxes on real property containing more than 5 acres but less than 20 acres, the department of revenue shall notify each taxpayer whose land value for 1986 due to reclassification to class four by application of 15-7-202 exceeds the average value per acre for such land in the taxpayer's county. The new notice must fully inform the taxpayer as to the reasons for the new notice, including the cause of the increase in value, the right to appeal to the county tax appeal board, and the extension of time for appeal."

CHAPTER 30

INDIVIDUAL INCOME TAX

Part 2

Withholding and Estimated Tax

15-30-204. Quarterly or weekly payment. (1) Except as provided in subsection (3), on or before the last day of April, July, October, and January, every employer subject to the provisions of 15-30-202 and 15-30-203 shall file a return in such form and containing such information as may be required by the department and, except as provided in subsection (2), shall pay therewith the amount required by 15-30-202 to be deducted and withheld by the employer from wages paid during the preceding quarter. Quarterly returns for employers paying weekly shall be used to summarize and adjust payments and request refunds of overpayments.

(2) An employer subject to the provisions of 15-30-202 and 15-30-203 whose total liability for withholdings equalled or exceeded $300,000 for the preceding calendar year shall remit a weekly payment to the department for the amount required by 15-30-202 to be deducted and withheld by the employer from wages paid during the preceding week. The weekly payment must be submitted on or before the date on which federal income tax weekly withholding payments are due.

(3) If the total amount of the tax withheld by an employer under the provisions of 15-30-202 upon the wages of all employees of any employer is less than $10 in each quarterly period of any year, such employer shall not be required to file the quarterly returns or to make the quarterly payments as provided in subsection (1), but in lieu thereof such employer shall, on or before February 15 of the year succeeding that in which such wages were paid, file an annual return in such form as may be required by the department and shall pay therewith the amount required to be deducted and withheld by the employer from all wages paid during the preceding calendar year.

(4) If the department has reason to believe that collection of the amount of any tax withheld is in jeopardy, it may proceed as provided for under 15-30-312 with respect to jeopardy assessments of income tax.

History: En. Sec. 5, Ch. 246, L. 1955; amd. Sec. 1, Ch. 212, L. 1967; amd. Sec. 187, Ch. 516, L. 1973; R.C.M. 1947, 84-4946; amd. Sec. 1, Ch. 28, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: In (1) at beginning inserted "Except as provided in subsection (3)", near beginning after "January", deleted "of each calendar year", in middle of first sentence inserted "except as provided in subsection (2)", at end of first sentence substituted "quarter" for "quarterly period of 3 months", and inserted second sentence; inserted (2); in (3) near middle substituted "in subsection (1)" for "in the preceding subsection"; and made minor changes in phraseology.

Effective Date — Applicability: The 1986 amendment was effective October 1, 1986, and applies to the reporting and payment period beginning April 1, 1987, and thereafter.

CHAPTER 35

COAL SEVERANCE TAX

Part 1
General Provisions

15-35-108. Disposal of severance taxes. Severance taxes collected under the provisions of this chapter are allocated as follows:

(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 50% of total coal severance tax collections. The trust fund moneys shall be deposited in the fund established under 17-6-203(5) and invested by the board of investments as provided by law.

(2) Starting July 1, 1986, and ending June 30, 1987, 6% of coal severance tax collections are allocated to the highway reconstruction trust fund account in the state special revenue fund. Starting July 1, 1987, and ending June 30, 1993, 12% of coal severance tax collections are allocated to the highway reconstruction trust fund account in the state special revenue fund.

(3) Coal severance tax collections remaining after the allocations provided by subsections (1) and (2) are allocated in the following percentages of the remaining balance:

(a) 2 ½% until July 1, 1987, and thereafter 4 ½% to the state special revenue fund to the credit of the alternative energy research development and demonstration account;

(b) 6% until July 1, 1987, and thereafter 37 ½% to the state special revenue fund to the credit of the local impact and education trust fund account;

(c) 30% until July 1, 1987, and thereafter 10% to the state special revenue fund for state equalization aid to public schools of the state;

(d) 1% to the state special revenue fund to the credit of the county land planning account;

(e) 1 ¼% to the credit of the renewable resource development bond fund;

(f) starting July 1, 1986, and ending June 30, 1989, 5% to the general fund, and after June 30, 1989, 5% to a nonexpendable trust fund for the purpose of parks acquisition or management, protection of works of art in the state capitol, and other cultural and aesthetic projects. Income from this trust fund shall be appropriated as follows:

(i) ⅓ for protection of works of art in the state capitol and other cultural and aesthetic projects; and

(ii) ⅔ for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102;

(g) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(h) ½ of 1% to the state special revenue fund for conservation districts;

(i) 1 ¼% to the debt service fund type to the credit of the water development debt service fund;

(j) 4% until July 1, 1987, to the highway reconstruction trust fund account in the state special revenue fund;

(k) all other revenues from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state.

History: En. 84-1309.1 by Sec. 2, Ch. 432, L. 1973; amd. Sec. 1, Ch. 250, L. 1974; amd. Sec. 4, Ch. 501, L. 1975; amd. Sec. 3, Ch. 502, L. 1975; amd. and redes. 84-1319 by Sec. 8, Ch. 525, L. 1975; amd. Sec. 2, Ch. 156, L. 1977; amd. Sec. 1, Ch. 540, L. 1977; amd. Sec. 2, Ch. 549, L. 1977; R.C.M. 1947, 84-1319; amd. Sec. 1, Ch. 653, L. 1979; amd. Sec. 1, Ch. 694, L. 1979; amd. Sec. 1, Ch. 479, L. 1981; amd. Sec. 43, Ch. 505, L. 1981; amd. Sec. 3, Ch. 281, L. 1983; amd. Sec. 5, Ch. 541, L. 1983; amd. Sec. 1, Ch. 246, L. 1985; amd. Sec. 1, Ch. 715, L. 1985; amd. Sec. 1, Ch. 3, Sp. L. June 1986; amd. Sec. 1, Ch. 19, Sp. L. June 1986.

Compiler's Comments

1986 Amendments: Chapter 3 at beginning of (3)(f) inserted 5% appropriation to the general fund and time periods; at beginning of (3)(f)(ii) deleted "starting July 1, 1985, and ending June 30, 1989"; and at end of (3)(f)(ii) after "23-1-102" deleted "and, after June 30, 1989, ⅔ for the acquisition of sites and areas described in 23-1-102 and the development, operation, and maintenance of sites acquired with funds allocated under this subsection".

Chapter 19 in (3)(b) reduced amount allocated until July 1, 1987, from 26% to 6%; and in (3)(c) changed "10%" to "30% until July 1, 1987, and thereafter 10%".

Effective Dates: The 1986 amendment made by Ch. 3 was effective June 30, 1986.

The 1986 amendment made by Ch. 19 was effective July 10, 1986, and applies retroactively to coal mined after April 1, 1986.

1985 Amendments: Chapter 246 in (3)(f)(ii) substituted present language for "⅔ for the acquisition of sites and areas described in 23-1-102 and the operation and maintenance of sites so acquired".

Chapter 715 in (3)(a) substituted "July 1, 1987" for "December 31, 1979"; in (3)(b) substituted "26%" for "26 ½% until July 1, 1979, and thereafter 37 ½%"; and inserted (3)(j). Amendment effective May 10, 1985, applicable to coal mined on or after April 1, 1985, and terminates July 1, 1987 (secs. 4 and 5, Ch. 715, L. 1985).

Code Commissioner Changes — Applicability of Allocations: In subsections (1) and (3) the Code Commissioner has deleted references to allocation formulas that are no longer effective. The Code Commissioner inserted in subsection (3)(b) "until July 1, 1987, and thereafter 37 ½%" and in (3)(j) "until July 1, 1987" because of the termination provision in sec. 5, Ch. 715, L. 1985.

1983 Amendments: Chapter 281, throughout section, substituted "state special revenue fund" for "earmarked revenue fund"; in (3)(g) (now (3)(e)), before "credit", deleted "sinking fund to the" and substituted "bond fund" for "bond account"; at beginning of (3)(h) (now (3)(f)), substituted "5% to a nonexpendable trust fund" for "5% to the earmarked revenue fund to the credit of a trust fund"; and in (3)(k) (now (3)(i)), substituted "debt service fund type" for "sinking fund" and "debt service fund" for "sinking account".

Chapter 541 inserted (2); and in introductory to (3), changed "allocation to the trust fund under subsection (1)" to "allocations provided by subsections (1) and (2)".

Effective Date: Section 7, Ch. 541, L. 1983, provided: "Sections 1 through 5 [60-3-216 through 60-3-218 and 1983 amendments to 15-35-108 and 17-3-201] are effective July 1, 1983, and terminate July 1, 1993."

1981 Amendments: Chapter 479 reduced the amount of the coal severance tax allocated to alternative energy research from 5% to 4 ½% in (2)(b) (now (3)(a)); and inserted subsection (2)(j) (now (3)(h)).

Chapter 505 reduced the amount of the coal severance tax allocated to the sinking fund to the credit of the renewable resource development bond account from 2 ½% to 1 ¼% in (2)(g) (now (3)(e)); and inserted (2)(k) (now (3)(i)).

CHAPTER 70

GASOLINE AND VEHICLE FUELS TAXES

Part 2

Basic Gasoline License Tax

15-70-204. Gasoline license tax — rate. (1) Every distributor shall pay to the department of revenue a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to 1 cent for each gallon of aviation gasoline, which shall be allocated to the department

of commerce as provided by 67-1-301, as amended, and 17 cents for each gallon of all other gasoline distributed by him within the state and upon which the gasoline license tax has not been paid by any other distributor.

(2) Gasoline exported or sold for export out of the state shall not be included in the measure of the distributor's license tax.

(3) Alcohol that is blended or is to be blended with gasoline to be sold as gasohol is subject to a tax per gallon equal to the license tax imposed on nonaviation gasoline distributors under subsection (1).

History: En. Sec. 3, Ch. 369, L. 1969; amd. Sec. 1, Ch. 202, L. 1971; amd. Sec. 2, Ch. 204, L. 1971; amd. Sec. 90, Ch. 516, L. 1973; amd. Sec. 3, Ch. 514, L. 1975; amd. Sec. 5, Ch. 390, L. 1977; R.C.M. 1947, 84-1847; amd. Sec. 2, Ch. 576, L. 1979; amd. Sec. 2, Ch. 632, L. 1979; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 1, Ch. 624, L. 1983; amd. Sec. 12, Ch. 649, L. 1983; amd. Sec. 1, Ch. 20, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: In (1) increased gasoline license tax from 15 to 17 cents.

Effective Date: The 1986 amendment was effective August 1, 1986.

1983 Amendments: Chapter 624, in (1) near middle, raised tax on gallon from 9 cents to 15 cents; and made permanent the 1-cent increment that was to have terminated July 1, 1983 (sec. 2, Ch. 632, L. 1979).

Chapter 649 substituted existing (3) for former text, which read: "(3) Gasohol shall be subject to gasoline license taxes in accordance with the following schedule:

(a) beginning April 1, 1979, gasohol shall be taxed at the rate of 2 cents per gallon;

(b) beginning April 1, 1985, gasohol shall be taxed at the rate of 4 cents per gallon;

(c) beginning April 1, 1987, gasohol shall be taxed at the rate of 6 cents per gallon."; and deleted (4), which provided: "If at any time the gasoline license tax is lower than the current applicable tax on gasohol, the lower tax rate shall be adopted for gasohol."

1981 Amendment: Chapter 274 substituted "department of commerce" for "department of community affairs" in (1).

Suspension: Section 3, Ch. 576, L. 1979 (repealed by sec. 14, Ch. 649, L. 1983), provided: "The governor may, upon recommendation of the director of the department of revenue and the director of the department of highways, suspend this act if the fiscal impact of this act significantly impairs the maintenance or construction of state or interstate highway systems." Chapter 576 added subsections (3) and (4) (now deleted) relating to gasohol.

Termination: Section 4, Ch. 576, L. 1979, provided: "This act terminates April 1, 1989."

TITLE 16

ALCOHOL AND TOBACCO

CHAPTER 2

STATE LIQUOR STORES

Part 1

Operation of Stores

16-2-101. Establishment and closure of state liquor stores — kinds and prices of liquor.

Compiler's Comments

Liquor Store Operations — Closures: The narrative to the appropriation to the Department of Revenue in sec. 17, House Bill 500, L. 1985, as amended by sec. 1, House Bill 30, Sp. L. June 1986, read: "Liquor Division proprietary funds necessary to maintain adequate inventories of liquor and wine and to operate the state

liquor operation are appropriated. During the 1987 biennium, the Division shall attempt to return at least 13 percent of net sales. Net sales are gross sales less discounts and all taxes collected. The Division shall limit operational expenses of the liquor merchandising system to not more than 15 percent of net sales. Operational expenses may not include product costs, freight charges, or expenses allocable to other divisions or licensing bureau expenses.

The Division retains full authority to determine store operating hours and the number and location of stores and employees. Nonprofitable or marginally profitable state stores shall be closed or converted to agency stores in an orderly manner. Agency stores shall be closed if the Division considers them marginally profitable and other state stores or agencies are located within a reasonable distance. The Division is directed to implement the recommendations of the Revenue Oversight Committee dated June 19, 1986, with respect to Liquor Division Recovery, provided the Department shall hold timely public hearings prior to closing any state store or agency and prior to implementing a price restructuring."

March 1986 Amendment: Chapter 2, Sp. L. March 1986, inserted (1)(c) that read: "(c) Once established, a store may not be closed by the department unless:

(i) the store is not operating at a profit; or

(ii) the closure is approved by the legislature at the next session of the legislature following the department's announcement of intent to close the store." Chapter 2 was effective April 4, 1986, applied retroactively to occurrences after December 31, 1985, and terminated July 1, 1986.

Freeze on Commissions — Recovery Plan: Sections 2 and 4 of Ch. 2, Sp. L. March 1986, froze liquor store commissions until July 1, 1986, and provided for development of a Liquor Division recovery plan for presentment to the June 1986 Special Session. The sections were not codified because of their temporary nature.

TITLE 17

STATE FINANCE

CHAPTER 1

GENERAL ADMINISTRATION

Part 2

Anticipation of Revenue

17-1-202. Repealed. Sec. 1, Ch. 2, Sp. L. June 1986.

History: En. Sec. 2, Ch. 658, L. 1979; amd. Sec. 1, Ch. 577, L. 1981.

Compiler's Comments

Effective Date: The repealer was effective June 30, 1986.

CHAPTER 2

ACCOUNTING

Part 1

Treasury Funds and Accounts

17-2-107. Accurate accounting records and interaccount loans. (1) The department of administration shall record receipts and disbursements for

treasury funds and for accounts within treasury funds and shall maintain records in such a manner as to reflect the total cash and invested balance of each fund and each account. The department of administration shall adopt the necessary procedures to insure that interdepartmental or intradepartmental transfers of money do not result in inflation of figures reflecting total governmental costs and revenues.

(2) When the expenditure of an appropriation is necessary and the cash balance in the account from which the appropriation was made is insufficient, the department of administration may authorize a transfer, as a temporary loan bearing no interest, of unrestricted moneys from other accounts, provided that there is reasonable evidence that the income will be sufficient to restore the amount so transferred within 1 calendar year and provided the loan is recorded in the state accounting records. The loan must be repaid within 1 calendar year of the date the loan is approved unless it is extended under subsection (3) or by specific legislative authorization. No account shall be so impaired that all proper demands thereon cannot be met even if the loan is extended.

(3) Under unusual circumstances the director of the department of administration may grant one extension of a loan for up to 1 year. The department of administration shall prepare a written justification and proposed repayment plan for each loan extension authorized and shall furnish a copy of the written justification and proposed repayment plan to the house appropriations and senate finance and claims committees at the next legislative session.

(4) Any loan from the general fund or the current unrestricted subfund to funds designated in subsections (1)(d)(i)(D) and (1)(d)(ii) through (1)(d)(vi) of 17-2-102 shall bear interest at a rate equivalent to the previous fiscal year's average rate of return on the board of investments' short-term investment pool. Except for investment earnings on restricted donations, all designated and restricted subfund investment earnings are credited to the state general fund.

(5) No accounting entity may have a negative cash balance at fiscal year-end. The department of administration may, however, allow any entity to carry a negative balance at any point during the fiscal year subject to the following restrictions:

(a) Accounting entity negative cash balances may not exist more than 7 working days in the funds provided in subsections (1)(a) through (1)(c) of 17-2-102.

(b) Units of the university system and postsecondary vocational-technical centers must maintain positive cash balances in the subfunds provided in subsections (1)(d)(i)(A) through (1)(d)(i)(D) and (1)(d)(ii) through (1)(d)(vi) of 17-2-102.

History: En. Sec. 6, Ch. 147, L. 1963; amd. Sec. 1, Ch. 268, L. 1971; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 79-414(2), (3); amd. Sec. 1, Ch. 626, L. 1979; amd. Sec. 4, Ch. 28, L. 1981; amd. Sec. 1, Ch. 517, L. 1983; amd. Sec. 2, Ch. 136, L. 1985; amd. Sec. 1, Ch. 354, L. 1985; amd. Sec. 1, Ch. 1, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: In (2) near end of first sentence after "income" deleted "provided for the remainder of the fiscal year", after "transferred" inserted "within 1 calendar year", near beginning of second sentence after "repaid" substituted "within 1 calendar year of the date the loan is approved" for "before the end of the fiscal year", and before "subsection (3)" deleted "the criteria of"; deleted former (3) that read: "(3) No loan may be extended into the next fiscal year unless it is for the sole purpose of:

(a) repairing or replacing property damage covered by insurance; or

(b) payment of expenses which will later be reimbursed by:

(i) contractual receipts due from federal revenue;

(ii) receipts due to the auxiliary and restricted subfunds;

(iii) receipts due to the loan fund; or

(iv) receipts from the sale of state prison ranch products"; and in present (3) deleted the first two sentences that read: "These loans may be extended into the next fiscal year if the department of administration receives sufficient written justification therefor from the borrower. A loan extended beyond the fiscal yearend must be repaid within 1 calendar year of the date the loan is approved."

Effective Date: The 1986 amendment was effective June 30, 1986.

1985 Amendments: Chapter 136 in (5) (now (4)) substituted "current unrestricted subfund" for "university current unrestricted subfund"; and in (6)(b) (now (5)(b)) after "university system", inserted "and postsecondary vocational-technical centers".

Chapter 354 inserted (3)(b)(iv) (now deleted).

1983 Amendment: In (2), inserted second sentence, and at end of third sentence after "met" inserted "even if the loan is extended"; and inserted (3) (now deleted) and (4) (now (3)).

1981 Amendment: Changed internal references to subsections of 17-2-102 to be consistent with amendments in sec. 2, Ch. 28, L. 1981.

CHAPTER 3

FEDERAL REVENUES AND ENDOWMENTS

Part 2

Distribution of Federal Return on State Resources

17-3-201. Repealed. Sec. 6, Ch. 20, Sp. L. June 1986.

History: En. Sec. 1, Ch. 246, L. 1973; amd. Sec. 1, Ch. 357, L. 1977; R.C.M. 1947, 79-211; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 4, Ch. 541, L. 1983.

Compiler's Comments

Effective Date: The repealer was effective July 1, 1986.

CHAPTER 5

PUBLIC BOND ISSUES

Part 4

Long-Range Building Program Bonds

17-5-422. Bonds for state capitol improvements. (1) The board of examiners is authorized to issue and sell long-range building program bonds, upon the conditions and in the manner stated in this part, in the principal amount not to exceed $5 million, for the purpose of financing costs of improvements to the state capitol. Proceeds of the bonds and investment income thereon unexpended as of October 1, 1986, must be applied to the payment of principal and interest next due on outstanding long-range building program bonds of the state.

(2) There is appropriated to the debt service account established pursuant to 17-5-405 from the revenues of the capitol building land grant (exclusive of

income derived from investment of accumulated revenues) in each fiscal year during the term of the bonds authorized by subsection (1) an amount sufficient to pay the principal of and interest on the bonds as due and to establish and maintain required reserves therefor. The appropriation shall be reduced in each fiscal year by the amount, if any, of income received in that year from investment of the reserve attributable to the bonds. The appropriation made by this section is solely for the benefit of the state and is not enforceable by the holders of the bonds. The appropriation terminates October 1, 1986.

History: En. Secs. 1, 2, Ch. 600, L. 1981; amd. Sec. 11, Ch. 298, L. 1983; amd. Sec. 1, Ch. 33, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: In (1) inserted last sentence; and in (2) inserted last sentence.

Effective Date: The 1986 amendment was effective October 1, 1986..

Preamble: The preamble to Ch. 33, Sp. L. June 1986, provided: "WHEREAS, the Legislature, by Chapter 600, Laws of 1981, authorized the issuance of $5 million principal amount long-range building program bonds to finance costs of improvements to the state capitol; and

WHEREAS, the bonds, with other long-range building program bonds for other purposes, were issued and sold in 1981; and

WHEREAS, unexpended proceeds of the bonds and investment income thereon remain in the capital projects fund for the capitol; and

WHEREAS, improvements to the capitol, to the extent presently agreed upon, have been completed or are near completion; and

WHEREAS, approximately $5.1 million remains in the capital projects fund and is not required to pay the costs of such improvements."

Transfer of Funds: Section 2, Ch. 33, Sp. L. June 1986, provided: "The balance of the capital renovation account within a capital projects fund, for improvements to the state capitol, is transferred from that account to the long-range building debt service fund and appropriated for the payment of principal and interest on bonds payable from that debt service fund."

1983 Amendment: Near beginning of (2), substituted "debt service account" for "sinking fund account".

Part 9

Highway Revenue Bonds

17-5-911. Highway revenue bond debt service account — deposit of bond proceeds. (1) There is in the debt service fund a highway revenue bond debt service account. Subject only to the prior pledge and appropriation made by 17-5-507, the state treasurer must deposit such highway revenues as may be pledged to the payment of particular bonds, to the credit of the highway revenue bond debt service account as required by resolution or indenture.

(2) All proceeds of an issue of bonds must be deposited in a separate account in the state special revenue fund, except that any premiums and accrued interest received may be deposited in a separate account in the debt service fund established for that bond issue by resolution or indenture. No more than the principal and interest on the bonds due in any year may be retained in the highway revenue bond debt service account for the payment of bonds. The remainder of pledged revenues is available for authorized purposes of the department. Money deposited in such separate accounts in the state special revenue fund until spent for project purposes may be pledged and appropriated for the payment of bonds, which are a first lien and prior charge upon such funds, and such funds may be used for payment of bonds to the extent highway revenues deposited in the highway revenue bond debt service account are not sufficient for such purpose.

(3) Interest and investment earnings on the separate accounts named in subsections (1) and (2) shall be retained in the separate accounts referred to in subsection (2).

History: En. Sec. 4, Ch. 557, L. 1983; amd. Sec. 4, Ch. 249, L. 1983; amd. Sec. 3, Ch. 20, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: Deleted former (4) that read: "Notwithstanding 17-6-202 and except as provided in subsection (3), interest and investment earnings on the highway state special revenue account shall be credited to the general fund until July 1, 1985, and thereafter shall be retained in the highway state special revenue account."

Effective Date: The 1986 amendment was effective July 1, 1986.

1983 Amendment: In (1), substituted language of first sentence for "There is in the highway earmarked revenue fund a highway revenue bond sinking account", and near end of subsection, substituted "highway revenue bond debt service account" for "highway revenue bond sinking account"; in (2), in first sentence substituted "state special revenue fund" for "highway earmarked revenue fund", and after "separate account" inserted "in the debt service fund", in second sentence substituted "highway revenue bond debt service account" for "separate account", in third sentence substituted "separate accounts in the state special revenue fund" for "separate accounts" and substituted "highway revenue bond debt service account" for "highway revenue bond sinking account"; in (3), substituted "the separate accounts referred to in subsection (2)" for "the highway earmarked revenue fund"; and in (4), substituted "highway state special revenue account" for "highway earmarked revenue fund" in two places.

Cross-References

Fund structure, 17-2-102.

Interest income to general fund, 17-6-202(2).

TITLE 18

PUBLIC CONTRACTS

CHAPTER 5

SPECIAL PURCHASING CONDITIONS

Part 5

Blind Person Preference

Part Compiler's Comments

Applicability: Section 3, Ch. 36, Sp. L. June 1986, provided: "A contract for the operation of a vending facility entered into prior to July 1, 1986, is not subject to this part while the contract remains in effect. In addition, this part may not be interpreted to require or authorize the failure to renew any contract for a vending facility on state property in effect on July 1, 1986, if the contract contains a provision permitting the renewal of the contract for a specific term at the option of the vendor or the state or both."

Effective Date: The 1986 enactment was effective July 23, 1986.

Part Cross-References

Vending facilities, Title 18, ch. 5, part 4.

18-5-501. Definitions. For purposes of this part, the following definitions apply:

(1) "Blind person" means a person whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity is greater than 20/200 but is accompanied by a limitation in the field of vision in the better eye to such a degree that the widest diameter of the visual field

subtends an angle no greater than 20 degrees as determined by an ophthalmologist or a physician skilled in diseases of the eye.

(2) "Department" means the department of administration.

(3) "Purchasing agency" means any state agency authorized by Title 18, chapter 4, to enter into contracts.

(4) "Responsible bidder" means a person who has the capability in all respects to fully perform the requirements of a contract and has the integrity and reliability that assure good faith performance.

(5) (a) "State property" means a building or portion of a building or other real property that is:

(i) owned or leased by the state or an agency of the state;

(ii) utilized in the conduct of state matters; and

(iii) occupied principally by state employees.

(b) State property does not include vocational institutions or institutions of higher education.

(6) "Vending facility" means the area and equipment, including vending machines, on state property which are utilized in providing a food or beverage service to employees and other persons present on the property.

(7) "Vending machine" means a device for the dispensing of foodstuffs, liquids, or other products when money is inserted into the device. Vending machine does not include a postage stamp machine, photocopy machine, or coin-operated telephone.

History: En. Sec. 1, Ch. 36, Sp. L. June 1986.

18-5-502. Preference to blind persons. (1) Whenever state property is proposed to be made available to private persons for use as a vending facility, if two or more substantially equal proposals submitted by responsible bidders are determined to most closely meet the purchasing agency's specifications and if one of the proposals has been submitted by a blind person, the contract must be awarded to the blind person.

(2) For purposes of this section, proposals are substantially equal if their overall ratings, as determined by the purchasing agency in accordance with the request for proposal, do not differ by more than 3%.

(3) Any contract awarded pursuant to this section to a blind person must prohibit transfer of the contract by sublease, assignment, or any other method.

History: En. Sec. 2, Ch. 36, Sp. L. June 1986.

18-5-503. Application of state procurement law. Procurement under this part is subject to all other statutes governing state procurement except that in case of conflict the provisions of this part apply.

History: En. Sec. 4, Ch. 36, Sp. L. June 1986.

Cross-References

Procurement generally, Title 18, ch. 4.

18-5-504. Blind preference rules. The department shall adopt rules to implement this part.

History: En. Sec. 5, Ch. 36, Sp. L. June 1986.

TITLE 19

PUBLIC RETIREMENT SYSTEMS

CHAPTER 1

SOCIAL SECURITY

Part 6
Contribution Account

19-1-602. *(Temporary)* **Management of account.** (1) All moneys in the account shall be mingled and undivided.

(2) Subject to the provisions of this chapter, the state agency is vested with full power, authority, and jurisdiction over the account, including all moneys and property or securities belonging thereto. It may perform any and all acts, whether or not specifically designated, which are necessary to the administration of the account and are consistent with the provisions of this chapter.

(3) The board of investments shall invest the account in investments of the same character as are permitted by 17-6-211 for the investment of moneys in the long-term investment fund. The state agency shall credit all interest and income earned on the account in excess of that which, in its judgment, may be needed for the purposes set forth in 19-1-603 to the funds of the state agency, to be used by it to defray the costs of administering the state agency as it may determine.

(4) No later than June 30, 1986, the state agency shall calculate an amount equal to the earned income from current and previous fiscal years in the contribution account, less all payments and credits due or owing, and transfer this amount to the state general fund.

19-1-602. *(Effective July 1, 1987)* **Management of account.** (1) All moneys in the account shall be mingled and undivided.

(2) Subject to the provisions of this chapter, the state agency is vested with full power, authority, and jurisdiction over the account, including all moneys and property or securities belonging thereto. It may perform any and all acts, whether or not specifically designated, which are necessary to the administration of the account and are consistent with the provisions of this chapter.

(3) The board of investments shall invest the account in investments of the same character as are permitted by 17-6-211 for the investment of moneys in the long-term investment fund. The state agency shall credit all interest and income earned on the account in excess of that which, in its judgment, may be needed for the purposes set forth in 19-1-603 to the state general fund.

(4) No later than June 30, 1986, the state agency shall calculate an amount equal to the earned income from current and previous fiscal years in

the contribution account, less all payments and credits due or owing, and transfer this amount to the state general fund.

History: En. Sec. 5, Ch. 44, L. 1953; amd. and redes. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969; amd. Sec. 4, Ch. 64, L. 1977; R.C.M. 1947, 59-1105(3); amd. Sec. 3, Ch. 264, L. 1981; amd. Sec. 1, Ch. 4, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: At end of (3) in version effective July 1, 1987, after "in 19-1-603 to the" substituted "state general fund" for "funds of the state agency, to be used by it to defray the costs of administering the state agency as it may determine"; and inserted (4) effective June 30, 1986.

1981 Amendment: Deleted "earmarked revenue fund or" after "19-1-603 to the" in (3); deleted "either" after "used by it" in (3); deleted "or for distribution pro rata to the contributing state departments, political subdivisions, school districts, and instrumentalities" before "as it may determine" at the end of (3).

CHAPTER 3

PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Part 6
Financial Management

19-3-603. Restrictions on use of fund. (1) Except as herein provided, no member and no employee of the department of administration may:

(a) have any interest, direct or indirect, in the making of any investment or in the gains or profits accruing therefrom;

(b) directly or indirectly, for himself or as an agent or partner of others, borrow any of its funds or deposits;

(c) in any manner use the same except to make such current and necessary payments as are authorized by the department; or

(d) become an endorser or surety as to or in any manner an obligor for investments for the retirement system.

(2) The assets of the retirement system may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable administrative expenses of the retirement systems administered by the board.

History: En. 68-1901 by Sec. 22, Ch. 323, L. 1973; amd. Sec. 5, Ch. 99, L. 1977; amd. Sec. 3, Ch. 286, L. 1977; amd. Sec. 10, Ch. 332, L. 1977; R.C.M. 1947, 68-1901(6), (7); amd. Sec. 2, Ch. 4, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: At end of (2) substituted "reasonable administrative expenses of the retirement systems administered by the board" for "reasonable expenses of administering the retirement system".

Effective Date: The 1986 amendment was effective June 30, 1986.

Part 8
Employer Contributions

19-3-805. Administrative expenses. (1) The legislature finds that proper administration of the retirement fund benefits both employers and members and continues to benefit members after retirement.

(2) Effective July 1, 1986, the administrative expenses of the retirement systems administered by the board must be paid from the income earnings on the retirement fund, except as provided in subsection (3). The board shall compute the administrative expenses attributable to each retirement system administered by the board and transfer that amount from the retirement system's pension trust fund to the retirement fund.

(3) In addition to the contributions elsewhere provided in this chapter, on January 1 of each year each employer shall contribute on behalf of each member then in its employ a membership fee of $1. The appropriation of these fees, together with other moneys appropriated for that purpose, shall be used for the purpose of defraying the administrative expense of this chapter. Any request for an increase of spending authority for administrative expenses requires a budget amendment and is subject to Title 17, chapter 7, part 4.

History: En. 68-1904 by Sec. 25, Ch. 323, L. 1973; amd. Sec. 3, Ch. 190, L. 1974; amd. Sec. 6, Ch. 99, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1904; amd. Sec. 2, Ch. 254, L. 1981; amd. Sec. 5, Ch. 496, L. 1981; amd. Sec. 1, Ch. 328, L. 1985; amd. Sec. 3, Ch. 4, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: Inserted (1) and (2).

Effective Date: The 1986 amendment was effective June 30, 1986.

1985 Amendment: Deleted former (1) that read: "The expense of administering this chapter, exclusive of the payments of retirement allowances and other benefits, may be paid from the fund"; at beginning of second sentence, changed "These fees" to "The appropriation of these fees"; and inserted last sentence.

1981 Amendments:

Chapter 254 substituted the language in (1) (now deleted) for language providing for a fee, not to exceed 0.3%, collected by the department from an employer for defraying expenses of the chapter.

Chapters 254 and 496 substituted "January" for "July" in the middle of (2) (now first sentence of (3)).

TITLE 20

EDUCATION

CHAPTER 2

STATE BOARDS AND COMMISSIONS

Part 1

State Board of Education — Board of Public Education — Board of Regents

20-2-121. Board of public education — powers and duties.

Compiler's Comments

Public School System Reorganization Study: Section 1, Ch. 21, Sp. L. June 1986, provided: "Legislative purpose — request for school cost savings plan. (1) The legislature recognizes that the recent and predicted shortfalls in state and local revenues may result in serious impacts on the ability of the state and the public school system to meet the constitutional mandate for quality public education in Montana. As part of this recognition, the legislature desires information and plans concerning potential cost savings, particularly cost savings related to the reorgan-

ization of school administration and school districts.

(2) The legislature requests the board of public education and the superintendent of public instruction to:

(a) formulate plans and options for reorganization of the public school system that would result in cost savings; and

(b) report such plans and any required legislation to the 50th legislature."

Effective Date: Chapter 21, Sp. L. June 1986, was effective July 10, 1986.

CHAPTER 3

ELECTED OFFICIALS

Part 1

Superintendent of Public Instruction

20-3-105. Administrative powers and duties.

Compiler's Comments

Public School System Reorganization Study: Section 1, Ch. 21, Sp. L. June 1986, provided: "Legislative purpose — request for school cost savings plan. (1) The legislature recognizes that the recent and predicted shortfalls in state and local revenues may result in serious impacts on the ability of the state and the public school system to meet the constitutional mandate for quality public education in Montana. As part of this recognition, the legislature desires information and plans concerning potential cost savings, particularly cost savings related to the reorganization of school administration and school districts.

(2) The legislature requests the board of public education and the superintendent of public instruction to:

(a) formulate plans and options for reorganization of the public school system that would result in cost savings; and

(b) report such plans and any required legislation to the 50th legislature."

Effective Date: Chapter 21, Sp. L. June 1986, was effective July 10, 1986.

CHAPTER 7

SCHOOL INSTRUCTION AND SPECIAL PROGRAMS

Part 3

Vocational and Technical Education

20-7-324. Sources of financing for postsecondary vocational-technical center budgets — superintendent of public instruction administration. (1) The total of the budgets approved by the superintendent of public instruction shall constitute the total maximum approved statewide vocational-technical center system budget which shall be financed as follows:

(a) The primary source of financing is to be those funds specifically designated by legislative enactment or referendum by the people for financing postsecondary vocational-technical education in Montana.

(b) The board of county commissioners of each county in which a designated postsecondary vocational-technical center is located shall levy a tax in each calendar year of 1 ½ mills on the dollar of all taxable property, real and personal, within the county for the support and maintenance of the postsecondary vocational-technical center located within the county.

(c) Designated postsecondary vocational-technical centers shall be eligible to receive such funds from the federal government as the superintendent of public instruction may provide pursuant to applicable acts of congress.

(d) The board of trustees of any designated high school district or county high school district where a postsecondary vocational-technical center is located may be required, as a condition for the construction in that district of a postsecondary vocational-technical center, or any part thereof, to furnish up to 50% of the amount of funds required for any such construction. The percentage of construction funds to be furnished by the designated district shall be derived, in whole or in part, from any of the following sources:

(i) the sale of bonds issued by that district (such bonds shall be issued in conformity with the requirements of chapter 9, part 4, of this title in the case of high school and county high school district);

(ii) any other funds available to that district which may be legally and properly applied toward such construction;

(iii) the reasonable value of land, buildings, fixtures, or equipment furnished by that district, subject to the approval of the superintendent of public instruction.

(2) The superintendent of public instruction shall direct the distribution of the funds specified in subsections (1)(a) through (1)(c) on the basis of the budgets approved by the superintendent of public instruction. The funds earned by the mill levy specified in subsection (1)(b) shall be credited to the postsecondary vocational-technical center account in the unrestricted subfund of the current fund in the state treasury.

(3) The superintendent of public instruction shall determine the amount of financing available from these four sources of revenue and may approve budgets for instruction, plant operations and maintenance, equipment, and support. The aggregate amount of the budgets so approved by the superintendent of public instruction for postsecondary vocational-technical centers shall not exceed the moneys determined to be available.

History: En. 75-7709 by Sec. 412, Ch. 5, L. 1971; amd. Sec. 1, Ch. 226, L. 1973; (amd. Sec. 10, Ch. 434, L. 1975 — [unconstitutional, 32 St. Rep. 670]; Sec. 10, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); amd. Sec. 26, Ch. 266, L. 1977; R.C.M. 1947, 75-7709; amd. Sec. 4, Ch. 598, L. 1979; amd. Sec. 1, Ch. 27, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: In (1) in first sentence after "public instruction" deleted "together with the budget for the cost of state administration of the postsecondary vocational-technical centers" and after "approved statewide" inserted "vocational-technical center system"; in (1)(b) changed the 1 ½ mill levy from permissive to mandatory; in (2) substituted "(1)(a) through (1)(c)" for "(1)(a) and (1)(c)", after "shall be credited" deleted "by the county treasurer", and at end substituted "account in the unrestricted subfund of the current fund in the state treasury" for "fund"; and in (3) in first sentence substituted "instruction, plant operations and maintenance, equipment, and support" for "maintenance and operation, construction, and ancillary services".

Effective Date: The 1986 amendment was effective July 16, 1986.

CHAPTER 9

FINANCE

Part 1

School Budgets

20-9-142. Fixing and levying taxes by board of county commissioners. On the second Monday in August, the county superintendent shall

place before the board of county commissioners the final adopted budget of the district and any emergency budget adopted by the district during the previous school fiscal year. It shall be the duty of the board of county commissioners to fix and levy on all the taxable value of all the real and personal property within the district all district and county taxation required to finance, within the limitations provided by law, the final budget and any emergency budget of the district.

History: En. 75-6717 by Sec. 223, Ch. 5, L. 1971; amd. Sec. 9, Ch. 277, L. 1977; R.C.M. 1947, 75-6717; amd. Sec. 3, Ch. 726, L. 1985; amd. Sec. 6, Ch. 26, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: Near middle of second sentence after "within the district", deleted "except as provided in subsection (2)"; and deleted former (2) that read: "(2) (a) The taxable value of property which is the subject of a protest and which remains under protest on the first Monday in August of the current year may be excluded from the district's taxable valuation if the taxable value of such property remaining under protest exceeds 5% of the district's taxable valuation in computing the mill levies to fund the final adopted budget of the district and any emergency budget adopted by the district during the previous school fiscal year.

(b) If tax money that was collected on property excluded under subsection (2)(a) is not required to be refunded to the taxpayer from the protest fund at the conclusion of a protest proceeding, such money shall be used to reduce subsequent property tax levies. The district shall calculate such levies by crediting the revenue from released protest funds directly to the revenue section of the budget and not to the cash reserves. If the crediting of such revenue reduces to zero the amount necessary to be raised by tax levy, the county treasurer shall refund on behalf of the district any excess protest fund revenue to the taxpayers. If a taxpayer is delinquent in the payment of prior taxes, the county treasurer may offset the delinquency rather than make a refund. A copy of the calculations made in fixing the tax levies under this subsection and calculations of any refunds must be delivered to the legislative auditor, the office of public instruction, and the department of revenue."

Effective Date — Applicability: The 1986 amendment was effective July 15, 1986, and applies to any appeal or tax paid under protest after that date.

1985 Amendment: Near middle of second sentence inserted exception clause; and inserted (2) (now deleted).

Part 3

Equalization Aid

20-9-318. Elementary school maximum budget schedule for 1986-87 and succeeding years. For 1986-87 and succeeding school years, the elementary school maximum budget schedule is as follows:

(1) For each elementary school having an ANB of nine or fewer pupils, the maximum shall be $20,158 if said school is approved as an isolated school.

(2) For schools with an ANB of 10 pupils but less than 18 pupils, the maximum shall be $20,158 plus $842.50 per pupil on the basis of the average number belonging over nine.

(3) For schools with an ANB of at least 14 pupils but less than 18 pupils that qualify for instructional aide funding under 20-9-322, the maximum shall be $33,042 plus $842.50 per pupil on the basis of the average number belonging over 14.

(4) For schools with an ANB of 18 pupils and employing one teacher, the maximum shall be $27,741 plus $842.50 per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 25.

(5) For schools with an ANB of 18 pupils and employing two full-time teachers, the maximum shall be $44,290 plus $527.60 per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 50.

(6) For schools having an ANB in excess of 40, the maximum on the basis of the total pupils (ANB) in the district for elementary pupils will be as follows:

(a) For a school having an ANB of more than 40 and employing a minimum of three teachers, the maximum of $1,957 shall be decreased at the rate of $1.90 for each additional pupil until the total number (ANB) shall have reached a total of 100 pupils.

(b) For a school having an ANB of more than 100 pupils, the maximum of $1,843 shall be decreased at the rate of $1.74 for each additional pupil until the ANB shall have reached 300 pupils.

(c) For a school having an ANB of more than 300 pupils, the maximum shall not exceed $1,496 for each pupil.

(7) The maximum per pupil for all pupils (ANB) and for all elementary schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil (ANB). All elementary schools operated within the incorporated limits of a city or town shall be treated as one school for the purpose of this schedule.

History: En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec. 1, Ch. 518, L. 1975; amd. Sec. 1, Ch. 505, L. 1977; R.C.M. 1947, 75-6905(10) thru (15); amd. Sec. 3, Ch. 690, L. 1979; amd. Sec. 3, Ch. 75, L. 1981; amd. Secs. 3, 5, Ch. 475, L. 1983; amd. Sec. 3, Ch. 629, L. 1983; amd. Sec. 3, Ch. 738, L. 1985; amd. Sec. 1, Ch. 7, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: In (1) substituted "$20,158" for "$20,757"; in (2) substituted "$20,158 plus $842.50" for "$20,757 plus $867.50"; in (3) substituted "$33,042 plus $842.50" for "$34,023 plus $867.50"; in (4) substituted "$27,741 plus $842.50" for "$28,565 plus $867.50"; in (5) substituted "$44,290 plus $527.60" for "$45,605 plus $543.30"; in (6)(a) substituted "$1,957" for "$2,015" and "$1.90" for "$1.96"; in (6)(b) substituted "$1,843" for "$1,898" and "$1.74" for "$1.79"; and in (6)(c) substituted "$1,496" for "$1,540".

Effective Date: The 1986 amendment was effective June 30, 1986.

1985 Amendment: In introduction substituted "1986-87" for "1984-85"; in (1) substituted "$20,757" for "$19,186"; in (2) substituted "$20,757 plus $867.50" for "$19,186 plus $801.80"; in (3) substituted "$34,023 plus $867.50" for "$31,448 plus $801.80"; in (4) substituted "$28,565 plus $867.50" for "$26,403 plus $801.80"; in (5) substituted "$45,605 plus $543.30" for "$42,154 plus $502.10"; in (6)(a) substituted "$2,015" for "$1,863" and "$1.96" for "$1.81"; in (6)(b) substituted "$1,898" for "$1,754" and "$1.79" for "$1.65"; and in (6)(c) substituted "$1,540" for "$1,424".

1983 Amendments: Chapter 475, sec. 3, inserted (3).

Section 5, Ch. 475, in (3), substituted "$31,448 plus $801.80" for "$29,358 plus $748.70" by way of coordination with House Bill 544 (signed into law as Ch. 629, L. 1983) and figures supplied by the Office of Public Instruction. Section 5, Ch. 475, read, in pertinent part, as follows: "Coordination. If House Bill 544 is passed by the 48th Legislature and approved, the dollar amounts amended into this act are to be increased by the same percentage that dollar amounts are increased in House Bill 544 as follows: . . .

(2) the dollar amounts amended into 20-9-318 by this act are to be increased by the same percentage that the dollar amounts in 20-9-318(2) were increased by its amendment in House Bill 544."

Chapter 629 inserted lead-in; increased the funding levels and per pupil amounts as follows: in (1) from $17,915 to $19,186; in (2) from $17,915 to $19,186 and $748.70 to $801.80; in (4) from $24,654 to $26,403 and $748.70 to $801.80; in (5) from $39,361 to $42,154 and $468.90 to $502.10; in (6)(a) from $1,740 to $1,863 and $1.69 to $1.81; in (6)(b) from $1,638 to $1,754 and $1.54 to $1.65; in (6)(c) from $1,329 to $1,424.

1981 Amendment: Increased the funding levels and per pupil amounts as follows: in (1) from $13,202 to $17,915; in (2) from $13,202 to $17,915 and $551.70 to $748.70; in (3) (now (4)) from $18,168 to $24,654 and $551.70 to $748.70; in (4) (now (5)) from $29,006 to $39,361 and $345.50 to $468.90; in (5)(a) from $1,282 to $1,740 and $1.25 to $1.69; in (5)(b) from $1,207 to $1,638 and $1.12 to $1.54; in (5)(c) from $979.60 to $1,329 ((5) now (6)).

20-9-319. High school maximum budget schedule for 1986-87 and succeeding years. For 1986-87 and succeeding school years, the high school maximum budget schedule is as follows:

(1) For each high school having an ANB of 24 or fewer pupils, the maximum shall be $114,845.

(2) For a secondary school having an ANB of more than 24 pupils, the maximum $4,785 shall be decreased at the rate of $26.10 for each additional pupil until the ANB shall have reached a total of 40 such pupils.

(3) For a school having an ANB of more than 40 pupils, the maximum of $4,368 shall be decreased at the rate of $26.10 for each additional pupil until the ANB shall have reached 100 pupils.

(4) For a school having an ANB of more than 100 pupils, a maximum of $2,802 shall be decreased at the rate of $4.37 for each additional pupil until the ANB shall have reached 200 pupils.

(5) For a school having an ANB of more than 200 pupils, the maximum of $2,365 shall be decreased by $2.40 for each additional pupil until the ANB shall have reached 300 pupils.

(6) For a school having an ANB of more than 300 pupils, the maximum of $2,125 shall be decreased at the rate of 44 cents until the ANB shall have reached 600 pupils.

(7) For a school having an ANB over 600 pupils, the maximum shall not exceed $1,993 per pupil.

(8) The maximum per pupil for all pupils (ANB) and for all high schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil (ANB). All high schools and junior high schools which have been approved and accredited as junior high schools, operated within the incorporated limits of a city or town, shall be treated as one school for the purpose of this schedule.

History: En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec. 1, Ch. 518, L. 1975; amd. Sec. 1, Ch. 505, L. 1977; R.C.M. 1947, 75-6905(16) thru (18); amd. Sec. 4, Ch. 690, L. 1979; amd. Sec. 4, Ch. 75, L. 1981; amd. Sec. 4, Ch. 629, L. 1983; amd. Sec. 4, Ch. 738, L. 1985; amd. Sec. 2, Ch. 7, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: In (1) substituted "$114,845" for "$118,256"; in (2) substituted "$4,785" for "$4,927" and "$26.10" for "$26.87"; in (3) substituted "$4,368" for "$4,497" and "$26.10" for "$26.87"; in (4) substituted "$2,802" for "$2,885" and "$4.37" for "$4.50"; in (5) substituted "$2,365" for "$2,435" and "$2.40" for "$2.47"; in (6) substituted "$2,125" for "$2,188" and "44 cents" for "45 cents"; and in (7) substituted "$1,993" for "$2,052".

Effective Date: The 1986 amendment was effective June 30, 1986.

1985 Amendment: In introduction substituted "1986-87" for "1984-85"; in (1) substituted "$118,256" for "$109,340"; in (2) substituted "$4,927" for "$4,556" and "$26.87" for "$24.85"; in (3) substituted "$4,497" for "$4,158" and "$26.87" for "$24.85"; in (4) substituted "$2,885" for "$2,667" and "$4.50" for "$4.16"; in (5) substituted "$2,435" for "$2,252" and "$2.47" for "$2.28"; in (6) substituted "$2,188" for "$2,023" and "45 cents" for "42 cents"; and in (7) substituted "$2,052" for "$1,897".

1983 Amendment: Inserted lead-in and increased the funding levels and per pupil amounts as follows: in (1) from $102,066 to $109,340; in (2) from $4,253 to $4,556 and $23.19 to $24.85; in (3) from $3,882 to $4,158 and $23.19 to $24.85; in (4) from $2,490 to $2,667 and $3.88 to $4.16; in (5) from $2,102 to $2,252 and $2.13 to $2.28; in (6) from $1,889 to $2,023 and 39 cents to 42 cents; in (7) from $1,771 to $1,897.

1981 Amendment: Increased the funding levels and per pupil amounts as follows: in (1) from $75,210 to $102,066; in (2) from $3,134 to $4,253 and $17.09 to $23.19; in (3) from $2,860 to $3,882 and $17.09 to $23.19; in (4) from $1,835 to $2,490 and $2.86 to $3.88; in (5) from $1,549 to $2,102 and $1.57 to $2.13; in (6) from $1,392 to $1,889 and 28 cents to 39 cents; in (7) from $1,305 to $1,771.

20-9-343. Definition of and revenue for state equalization aid. (1) As used in this title, the term "state equalization aid" means those moneys

deposited in the state special revenue fund as required in this section plus any legislative appropriation of moneys from other sources for distribution to the public schools for the purpose of equalization of the foundation program.

(2) The legislative appropriation for state equalization aid shall be made in a single sum for the biennium. The superintendent of public instruction has authority to spend such appropriation, together with the earmarked revenues provided in subsection (3), as required for foundation program purposes throughout the biennium.

(3) The following shall be paid into the state special revenue fund for state equalization aid to public schools of the state:

(a) 25% of all moneys received from the collection of income taxes under chapter 30 of Title 15;

(b) 25% of all moneys, except as provided in 15-31-702, received from the collection of corporation license taxes under chapter 31 of Title 15, as provided by 15-1-501;

(c) 10% of the moneys received from the collection of the severance tax on coal under chapter 35 of Title 15;

(d) 100% of the moneys received from the treasurer of the United States as the state's shares of oil, gas, and other mineral royalties under the federal Mineral Lands Leasing Act, as amended;

(e) interest and income moneys described in 20-9-341 and 20-9-342;

(f) income from the local impact and education trust fund account; and

(g) in addition to these revenues, the surplus revenues collected by the counties for foundation program support according to 20-9-331 and 20-9-333 shall be paid into the same state special revenue fund.

(4) Any surplus revenue in the state equalization aid account in the second year of a biennium may be used to reduce the appropriation required for the next succeeding biennium [or may be transferred to the state permissive account if revenues in that fund are insufficient to meet the state's permissive amount obligation].

History: En. 75-6916 by Sec. 266, Ch. 5, L. 1971; amd. Sec. 12, Ch. 137, L. 1973; amd. Sec. 3, Ch. 355, L. 1973; amd. Sec. 12, Ch. 502, L. 1975; amd. Sec. 1, Ch. 356, L. 1977; R.C.M. 1947, 75-6916; amd. Sec. 15, Ch. 634, L. 1979; amd. Sec. 2, Ch. 317, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 20, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: In (3)(d) increased from 62 ½% to 100% the portion of oil and gas royalties allocated to state equalization aid.

Effective Date: The 1986 amendment was effective July 1, 1986.

1983 Amendment: Substituted references to state special revenue fund for references to earmarked revenue fund.

1981 Amendment: Chapter 317 added subsections (2) and (4).

Inconsistent Language: Chapter 540, L. 1981, entitled "An Act to simplify utilization of funds available for financing the foundation program and permissive portions of public school budgets; amending sections 20-9-345, 20-9-351, and 20-9-352, MCA" purported to abolish the permissive levy account by deleting all references to that account in the three sections amended. For this reason and because sec. 1 of Ch. 540 deleted from 20-9-345 language requiring that unencumbered funds remaining in the public school equalization earmarked revenue account at the end of the year be transferred to the state permissive school levies earmarked revenue account, the Code Commissioner has placed brackets around similar language in subsection (4), which was added by Ch. 317, L. 1981, to indicate that this language is apparently inconsistent with the elimination of the state permissive account.

20-9-344. Purpose of state equalization aid and duties of the board of public education for distribution — conditions of first payment. (1) The money available for state equalization aid shall be distributed

and apportioned to provide an annual minimum operating revenue for the elementary and high schools in each county, exclusive of revenues required for debt service and for the payment of any and all costs and expense incurred in connection with any adult education program, recreation program, school food services program, new buildings, new grounds, and transportation.

(2) The board of public education shall administer and distribute the state equalization aid in the manner and with the powers and duties provided by law. To this end, the board of public education shall:

(a) adopt policies for regulating the distribution of state equalization aid in accordance with the provisions of law and in a manner that would most effectively meet the financial needs of districts;

(b) have the power to require such reports from the county superintendents, budget boards, county treasurers, and trustees as it may deem necessary; and

(c) order the superintendent of public instruction to distribute the state equalization aid on the basis of each district's annual entitlement to such aid as established by the superintendent of public instruction. In ordering the distribution of state equalization aid, the board of public education shall not increase or decrease the state equalization aid distribution to any district on account of any difference which may occur during the school fiscal year between budgeted and actual receipts from any other source of school revenue.

(3) Should a district receive more state equalization aid than it is entitled to, the county treasurer must return the overpayment to the state upon the request of the superintendent of public instruction in the manner prescribed by the department of commerce.

(4) The first payment of state equalization aid must be:

(a) based on an estimate of 20% of each district's entitlement; and

(b) distributed by July 15 of the school fiscal year.

History: En. 75-6917 by Sec. 267, Ch. 5, L. 1971; amd. Sec. 1, Ch. 166, L. 1973; amd. Sec. 2, Ch. 345, L. 1973; amd. Sec. 1, Ch. 346, L. 1973; amd. Sec. 1, Ch. 55, L. 1974; amd. Sec. 41, Ch. 213, L. 1975; R.C.M. 1947, 75-6917; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 6, Ch. 317, L. 1981; amd. Secs. 1, 3, Ch. 236, L. 1983; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 1, Ch. 18, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: In (2)(a) at end inserted "and in a manner that would most effectively meet the financial needs of districts"; and inserted (4).

Contingent Effective Date: Section 2, Ch. 18, Sp. L. June 1986, provided that the act was effective on passage and approval if the maximum budget schedules for school fiscal year 1987 in 20-9-318 and 20-9-319 were reduced or repealed by the June 1986 Special Session of the Legislature. Chapter 7, Sp. L. June 1986, effective June 30, 1986, reduced such budget schedules. Chapter 18, Sp. L. June 1986, was effective July 10, 1986.

1983 Amendments: Chapter 236 inserted (4) relating to erroneous claims or reimbursement of school equalization funds and adjustment of such errors. Subsection (4) terminated January 1, 1985, under sec. 3, Ch. 236, L. 1983.

Chapter 287 substituted reference to Department of Commerce for reference to Department of Administration.

1981 Amendments: Chapter 274 substituted "department of administration" for "municipal division of the department of community affairs" in (3).

Chapter 317 deleted "Except as provided in 20-9-345" at the beginning of (1).

TITLE 39

LABOR

CHAPTER 51

UNEMPLOYMENT INSURANCE

Part 13
Unpaid Contributions

39-51-1301. *(Temporary)* **Penalty and interest on past-due contributions.** (1) Contributions unpaid on the date on which they are due and payable, as provided by subsections (1) and (2) of 39-51-1103 and 39-51-1125, that are paid within 20 days after the due date shall be subject to a penalty assessment of $10 or 10% of the contribution due, whichever is greater. If the contributions are not paid within 20 days after the due date, the employer shall be subject to a penalty assessment of $15 or 15% of the contributions due, whichever is greater. All past-due contributions shall bear interest at the rate of 18% a year, to be prorated on a daily basis.

(2) A penalty of $40 shall be assessed whenever, as the result of a willful refusal of an employer to furnish wage information or pay contributions on time, the department issues a subpoena to obtain wage information or makes a summary or jeopardy assessment pursuant to 39-51-1302.

(3) There is an account in the federal special revenue fund. Penalties and interest collected under this section must be deposited in that account. Money deposited in that account and appropriated to the department must be used by the department to administer this chapter and for programs to train and retrain unemployed and underemployed persons. Money in the account not appropriated for these purposes must be transferred by the department to the unemployment insurance trust fund at the end of each fiscal year.

(4) When failure to pay contributions on time was not caused by willful intent of the employer, the department may abate the penalty and interest.

(5) All money accruing to the unemployment insurance trust fund from interest and penalties collected on past-due contributions must be used solely for the payment of unemployment insurance benefits and may not be used for any other purpose.

39-51-1301. *(Effective July 1, 1989)* **Penalty and interest on past-due contributions.** (1) Contributions unpaid on the date on which they are due and payable, as provided by subsections (1) and (2) of 39-51-1103 and 39-51-1125, that are paid within 20 days after the due date shall be subject to a penalty assessment of $10 or 10% of the contribution due, whichever is greater. If the contributions are not paid within 20 days after the due date, the employer shall be subject to a penalty assessment of $15 or 15% of the contributions due, whichever is greater. All past-due contributions shall bear interest at the rate of 18% a year, to be prorated on a daily basis.

(2) A penalty of $40 shall be assessed whenever, as the result of a willful refusal of an employer to furnish wage information or pay contributions on time, the department issues a subpoena to obtain wage information or makes a summary or jeopardy assessment pursuant to 39-51-1302.

(3) Interest and penalties collected pursuant to this section shall be paid into the unemployment insurance trust fund.

(4) When failure to pay contributions on time was not caused by willful intent of the employer, the department may abate the penalty and interest.

(5) All money accruing to the unemployment insurance trust fund from interest and penalties collected on past-due contributions must be used solely for the payment of unemployment insurance benefits and may not be used for any other purpose.

History: En. Subd. (a), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 3, Ch. 233, L. 1943; amd. Sec. 5, Ch. 190, L. 1945; amd. Sec. 24, Ch. 368, L. 1975; amd. Sec. 1, Ch. 197, L. 1977; R.C.M. 1947, 87-135; amd. Sec. 1, Ch. 47, L. 1979; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 19, Ch. 685, L. 1979; amd. Sec. 1, Ch. 2, L. 1981; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 2, Ch. 369, L. 1983; amd. Sec. 1, Ch. 555, L. 1983; amd. Sec. 1, Ch. 13, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: In (3) of temporary version substituted present language for former (3) that read: "Interest and penalties collected pursuant to this section shall be paid into the unemployment insurance trust fund."

Effective Date: The 1986 amendment was effective July 3, 1986, and terminates July 1, 1989.

1983 Amendments: Chapter 369 inserted (5).

Chapter 555 substituted (1) for "Contributions unpaid on the date on which they are due and payable, as provided by subsections (1) and (2) of 39-51-1103 and 39-51-1125, shall be subject to a penalty assessment of $10 or 10% of the contribution due, whichever is greater, and shall bear interest at the rate of 1% per month."; and inserted (2).

1981 Amendments: Chapter 2 deleted the first sentence in (1) which assessed a $10 penalty for late filing of unemployment contribution reports; made other changes in phraseology in (3) (now (4)).

Chapter 349 substituted "department" for "division" in (3) (now (4)).

TITLE 41

MINORS

CHAPTER 5

YOUTH COURT ACT

Part 2

Youth Court — Jurisdiction

41-5-207. *(Temporary)* **Court costs and expenses.** (1) The following expenses shall be a charge upon the funds of the court or other appropriate agency when applicable, upon their certification by the court:

(a) the costs of medical and other examinations and treatment of a youth ordered by the court;

(b) reasonable compensation for services and related expenses for counsel appointed by the court for a party;

(c) the expenses of service of summons, notices, subpoenas, traveling expenses of witnesses, and other like expenses incurred in any proceeding under the Montana Youth Court Act as provided for by law;

(d) reasonable compensation of a guardian ad litem appointed by the court; and

(e) cost of transcripts and printing briefs on appeal.

(2) If treatment pursuant to subsection (1)(a) is ordered to be given at the Montana youth treatment center, costs shall be subject to reimbursement pursuant to Title 53, chapter 1, part 4.

41-5-207. *(Effective as provided in Compiler's Comments)* **Court costs and expenses.** The following expenses shall be a charge upon the funds of the court or other appropriate agency when applicable, upon their certification by the court:

(1) the costs of medical and other examinations and treatment of a youth ordered by the court;

(2) reasonable compensation for services and related expenses for counsel appointed by the court for a party;

(3) the expenses of service of summons, notices, subpoenas, traveling expenses of witnesses, and other like expenses incurred in any proceeding under the Montana Youth Court Act as provided for by law;

(4) reasonable compensation of a guardian ad litem appointed by the court; and

(5) cost of transcripts and printing briefs on appeal.

History: En. 10-1226 by Sec. 26, Ch. 329, L. 1974; R.C.M. 1947, 10-1226; amd. Sec. 6, Ch. 363, L. 1983; amd. Sec. 1, Ch. 737, L. 1985; amd. Sec. 2, Ch. 11, Sp. L. June 1986; amd. Sec. 6, Ch. 14, Sp. L. June 1986.

Compiler's Comments

1986 Amendments: Chapter 11, Sp. L. June 1986, deleted former (1)(f) in both versions that included as an allowable charge the cost of detention at the Mountain View School.

Section 6, Ch. 14, Sp. L. June 1986, deleted in second version (2) of the temporary version.

Effective Dates: Chapter 11, Sp. L. June 1986, was effective July 1, 1986.

Section 6, Ch. 14, Sp. L. June 1986, will be effective on the date the deed of sale of the Montana Youth Treatment Center from the Board of Land Commissioners is delivered to a buyer.

Repealer: Section 15, Ch. 14, Sp. L. June 1986, also repeals sections 53-21-164, 53-21-501, 53-21-502, and 53-21-505, effective upon the sale.

1985 Amendment: Section 1, Ch. 737, L. 1985, inserted (1)(f). Amendment was to terminate July 1, 1987 (sec. 5, Ch. 737, L. 1985). Sections 1 and 5, Ch. 737, were repealed by sec. 2, Ch. 11, Sp. L. June 1986.

1983 Amendment: Inserted (2) (of temporary version).

Part 3
Detention Procedure

41-5-306. Place of shelter care or detention. (1) A youth alleged to be a delinquent youth or youth in need of supervision may be sheltered only in:

(a) a licensed youth foster home as defined in 41-3-1102;

(b) a facility operated by a licensed child welfare agency; or

(c) a licensed youth group home as defined in 41-3-1102.

(2) A youth alleged to be a delinquent youth may be detained in a jail or other facility for the detention of adults only if:

(a) the facilities in subsection (1) are not available or do not provide adequate security;

(b) the detention is in an area physically and visually separate and removed from those of adults;

(c) it appears to the satisfaction of the court that public safety and protection reasonably require detention; and

(d) the court so orders.

(3) The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the court immediately if a person who is or appears to be under the age of 18 years is received at the facility. Such official shall bring the person before the court upon request or deliver him to a detention facility designated by the court.

(4) A youth alleged to be in need of care shall be placed only in the facilities stated in subsection (1) of this section and shall not be detained in a jail or other facility intended or used for the detention of adults charged with criminal offenses.

History: En. 10-1214 by Sec. 14, Ch. 329, L. 1974; amd. Sec. 6, Ch. 571, L. 1977; R.C.M. 1947, 10-1214; amd. Sec. 3, Ch. 465, L. 1983; amd. Sec. 2, Ch. 737, L. 1985; amd. Sec. 1, Ch. 11, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: Deleted (4) that read: "(a) A youth alleged to be a delinquent youth may be detained at Mountain View school as provided in 53-30-202. The superintendent of the school must be notified before a youth is transported to the school for detention. The county of the youth's residence shall:

(i) pay the cost of transporting the youth to and from the school;

(ii) pay medical costs incurred by the youth during detention; and

(iii) reimburse the state general fund for the per diem cost of detention. The department of institutions, at the beginning of each fiscal year, shall determine the per diem rate by dividing the additional budgeted daily cost of providing detention services by the anticipated average daily detention population.

(b) Counties receiving detention services will be billed monthly for services provided the preceding month, and may be refused further services if bills are not paid within 60 days of receipt of statement.

(c) The county shall pay the costs provided for in subsection (4)(a) from the county's district court fund."

Effective Date: The 1986 amendment was effective July 1, 1986.

1985 Amendment: In (2) substituted "A youth alleged to be a delinquent youth" for "The youth"; and inserted (4) (now deleted). Amendment was to terminate July 1, 1987 (Sec. 5, Ch. 737, L. 1985). Section 5, Ch. 737, was repealed by sec. 2, Ch. 11, Sp. L. June 1986.

1983 Amendment: In (1)(a), substituted present language for "a licensed foster home or a home approved by the court for the provision of shelter care of youth"; in (1)(c), substituted present language for "a licensed attention home or shelter facility which is operated by a nonprofit corporation or the youth court for the provision of shelter care of youth"; and deleted former (1)(d), which read: "any other suitable place or facility designated or operated by the court for the supervision of youth in shelter care".

Part 4
Informal Proceeding

41-5-403. *(Temporary)* **Disposition permitted under informal adjustment.** (1) The following dispositions may be imposed by informal adjustment:

(a) probation;

(b) placement of the youth for substitute care into a youth care facility as defined in 41-3-1102 or into a home approved by the court;

(c) placement of the youth in a private agency responsible for the care and rehabilitation of such a youth;

(d) transfer of legal custody to the department of institutions for a period of 6 months, which period may be extended for 6 months upon further order of the court after notice and hearing;

(e) restitution upon approval of the youth court judge.

(2) In determining whether restitution is appropriate in a particular case, the following factors may be considered in addition to any other evidence:

(a) age of the youth;

(b) ability of the youth to pay;

(c) ability of the parents or legal guardian to pay;

(d) amount of damage to the victim; and

(e) legal remedies of the victim; however, the ability of the victim or his insurer to stand any loss may not be considered in any case.

(3) If the court finds that placement in a youth care facility other than a youth group home or youth foster home is necessary and in the best interests of the youth and the community, the court shall determine if the youth can receive appropriate treatment in a youth care facility located in Montana as follows:

(a) If the court finds the youth can receive appropriate treatment in a youth care facility located in Montana that will accept the youth, the court may not place the youth in a youth care facility located outside this state unless an out-of-state facility can provide appropriate treatment that:

(i) can be obtained at a cost less than that offered by any available facility in this state; and

(ii) is available in closer proximity to the youth's place of residence than any facility located in this state.

(b) When the department of social and rehabilitation services is ordered to pay the costs of caring for the child in a youth care facility other than a youth foster home or youth group home, the court shall provide the department with at least 5 days' written notice and opportunity to be heard before ordering the placement of the youth.

(4) If the youth violates his aftercare agreement as provided for in 53-30-226, he must be returned to the court for further disposition. No youth may be placed in a state youth correctional facility under informal adjustment.

(5) If custody is given to the department of institutions under subsection (1)(d), the youth may not be committed to the Montana youth treatment center unless the commitment provisions of 53-21-505 are followed.

41-5-403. *(Effective as provided in Compiler's Comments)* **Disposition permitted under informal adjustment.** (1) The following dispositions may be imposed by informal adjustment:

(a) probation;

(b) placement of the youth for substitute care into a youth care facility as defined in 41-3-1102 or into a home approved by the court;

(c) placement of the youth in a private agency responsible for the care and rehabilitation of such a youth;

(d) transfer of legal custody to the department of institutions for a period of 6 months, which period may be extended for 6 months upon further order of the court after notice and hearing;

(e) restitution upon approval of the youth court judge.

(2) In determining whether restitution is appropriate in a particular case, the following factors may be considered in addition to any other evidence:

(a) age of the youth;

(b) ability of the youth to pay;

(c) ability of the parents or legal guardian to pay;

(d) amount of damage to the victim; and

(e) legal remedies of the victim; however, the ability of the victim or his insurer to stand any loss may not be considered in any case.

(3) If the court finds that placement in a youth care facility other than a youth group home or youth foster home is necessary and in the best interests of the youth and the community, the court shall determine if the youth can receive appropriate treatment in a youth care facility located in Montana as follows:

(a) If the court finds the youth can receive appropriate treatment in a youth care facility located in Montana that will accept the youth, the court may not place the youth in a youth care facility located outside this state unless an out-of-state facility can provide appropriate treatment that:

(i) can be obtained at a cost less than that offered by any available facility in this state; and

(ii) is available in closer proximity to the youth's place of residence than any facility located in this state.

(b) When the department of social and rehabilitation services is ordered to pay the costs of caring for the child in a youth care facility other than a youth foster home or youth group home, the court shall provide the department with at least 5 days' written notice and opportunity to be heard before ordering the placement of the youth.

(4) If the youth violates his aftercare agreement as provided for in 53-30-226, he must be returned to the court for further disposition. No youth may be placed in a state youth correctional facility under informal adjustment.

History: En. 10-1210 by Sec. 10, Ch. 329, L. 1974; amd. Sec. 4, Ch. 100, L. 1977; amd. Sec. 3, Ch. 571, L. 1977; R.C.M. 1947, 10-1210(4); amd. Sec. 3, Ch. 246, L. 1979; amd. Sec. 3, Ch. 484, L. 1981; amd. Sec. 1, Ch. 129, L. 1983; amd. Sec. 7, Ch. 363, L. 1983; amd. Sec. 4, Ch. 465, L. 1983; amd. Sec. 5, Ch. 531, L. 1985; amd. Sec. 7, Ch. 14, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: Deleted in second version (5) of the temporary version.

Effective Date: The 1986 amendment will be effective on the date the deed of sale of the Montana Youth Treatment Center from the Board of Land Commissioners is delivered to a buyer.

Repealer: Section 15, Ch. 14, Sp. L. June 1986, also repeals sections 53-21-164, 53-21-501, 53-21-502, and 53-21-505, effective upon the sale.

1985 Amendment: Inserted (3).

1983 Amendments: Chapter 129 made the following changes: in (1)(d), substituted present language for "transfer of legal custody of the youth to the department of institutions, provided that such commitment does not authorize the department of institutions to place the youth in a state youth correctional facility, and such commitment may not exceed a period of 6 months without a subsequent order of the court, after notice and hearing;" and inserted (3) (now (4)).

Chapter 363 inserted (4) (now (5)).

Chapter 465 made the following changes: in (1)(b), substituted language after "placement of the youth" for "in a licensed foster home or other home approved by the court"; at end of (1)(c), deleted "including but not limited to a district youth guidance home".

1981 Amendment: Added the provision concerning ability to pay to (2)(e).

Part 5
Proceeding on Petition

41-5-523. *(Temporary)* **Disposition of delinquent youth and youth in need of supervision.** (1) If a youth is found to be delinquent or in need

of supervision, the court may enter its judgment making the following disposition:

(a) place the youth on probation;

(b) place the youth for substitute care into a youth care facility as defined in 41-3-1102 or a home approved by the court;

(c) place the youth in a private agency responsible for the care and rehabilitation of such a youth;

(d) transfer legal custody to the department of institutions; provided, however, that in the case of a youth in need of supervision, such transfer of custody does not authorize the department of institutions to place the youth in a state youth correctional facility and such custody may not continue for a period of more than 6 months without a subsequent court order after notice and hearing;

(e) such further care and treatment or evaluation that the court considers beneficial to the youth; or

(f) order restitution by the youth.

(2) At any time after the youth has been taken into custody, the court may, with the consent of the youth in the manner provided in 41-5-303 for consent by a youth to waiver of his constitutional rights or after the youth has been adjudicated delinquent or in need of supervision, order the youth to be evaluated by the department of institutions for a period not to exceed 45 days of evaluation at a reception and evaluation center for youths.

(3) At any time after a youth has been taken into custody, the court may request that the youth be evaluated at the Montana youth treatment center, for a period not to exceed 60 days, for the sole purpose of advising the court as to whether the youth is seriously mentally ill, as defined in 53-21-102, but the court must first find that reasonable grounds exist to believe that the youth is suffering from a mental disorder as defined in 53-21-102.

(4) No evaluation of a youth may be performed at the Montana state hospital unless such youth is transferred to the district court under 41-5-206.

(5) If the court determines that a delinquent youth or youth in need of supervision is in need of treatment at the Montana youth treatment center, the court must first determine, based on testimony of a professional person, as defined in 53-21-102, that the youth is seriously mentally ill as defined in 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119.

(6) Upon a finding of serious mental illness, the court may commit a delinquent youth to the department of institutions and recommend that the youth be placed at the Montana youth treatment center. Upon release or discharge from the center, if the court order has not expired or if the youth is less than 21 years of age, he must be retained under the supervision of the department until the expiration of the court order or until he attains the age of 21.

(7) If the court finds that placement in a youth care facility other than a youth group home or youth foster home is necessary and in the best interests of the youth and the community, the court shall determine if the youth can receive appropriate treatment in a youth care facility located in Montana as follows:

(a) If the court finds the youth can receive appropriate treatment in a youth care facility located in Montana that will accept the youth, the court

may not place the youth in a youth care facility located outside this state unless an out-of-state facility can provide appropriate treatment that:

(i) can be obtained at a cost less than that offered by any available facility in this state; and

(ii) is available in closer proximity to the youth's place of residence than any facility located in this state.

(b) When the department of social and rehabilitation services is ordered to pay the costs of caring for the child in a youth care facility other than a youth foster home or youth group home, the court shall provide the department at least 5 days' written notice and opportunity to be heard before ordering the placement of the youth.

(8) No youth may be committed or transferred to a penal institution or other facility used for the execution of sentence of adult persons convicted of crimes.

(9) Any order of the court may be modified at any time. In the case of a youth committed to the department of institutions, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

(10) Whenever the court vests legal custody in an agency, institution, or department, it must transmit with the dispositional judgment copies of a medical report and such other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

(11) The order of commitment to the department of institutions shall read as follows:

ORDER OF COMMITMENT

State of Montana)
) ss.
County of .....)

In the district court for the .... Judicial District.

On the .... day of ...., 19.., ..., a minor of this county, ... years of age, was brought before me charged with ..... Upon due proof I find that .... is a suitable person to be committed to the department of institutions.

It is ordered that .... be committed to the department of institutions until .....

The names, addresses, and occupations of the parents are:

Name Address Occupation

.....

.....

The names and addresses of their nearest relatives are:

.....

.....

Witness my hand this .... day of ...., A.D. 19...

.....
Judge

41-5-523. *(Effective as provided in Compiler's Comments)* **Disposition of delinquent youth and youth in need of supervision.** (1) If a youth is found to be delinquent or in need of supervision, the court may enter its judgment making the following disposition:

(a) place the youth on probation;

(b) place the youth for substitute care into a youth care facility as defined in 41-3-1102 or a home approved by the court;

(c) place the youth in a private agency responsible for the care and rehabilitation of such a youth;

(d) transfer legal custody to the department of institutions; provided, however, that in the case of a youth in need of supervision, such transfer of custody does not authorize the department of institutions to place the youth in a state youth correctional facility and such custody may not continue for a period of more than 6 months without a subsequent court order after notice and hearing;

(e) such further care and treatment or evaluation that the court considers beneficial to the youth; or

(f) order restitution by the youth.

(2) At any time after the youth has been taken into custody, the court may, with the consent of the youth in the manner provided in 41-5-303 for consent by a youth to waiver of his constitutional rights or after the youth has been adjudicated delinquent or in need of supervision, order the youth to be evaluated by the department of institutions for a period not to exceed 45 days of evaluation at a reception and evaluation center for youths.

(3) No evaluation of a youth may be performed at the Montana state hospital unless such youth is transferred to the district court under 41-5-206.

(4) If the court finds that placement in a youth care facility other than a youth group home or youth foster home is necessary and in the best interests of the youth and the community, the court shall determine if the youth can receive appropriate treatment in a youth care facility located in Montana as follows:

(a) If the court finds the youth can receive appropriate treatment in a youth care facility located in Montana that will accept the youth, the court may not place the youth in a youth care facility located outside this state unless an out-of-state facility can provide appropriate treatment that:

(i) can be obtained at a cost less than that offered by any available facility in this state; and

(ii) is available in closer proximity to the youth's place of residence than any facility located in this state.

(b) When the department of social and rehabilitation services is ordered to pay the costs of caring for the child in a youth care facility other than a youth foster home or youth group home, the court shall provide the department at least 5 days' written notice and opportunity to be heard before ordering the placement of the youth.

(5) No youth may be committed or transferred to a penal institution or other facility used for the execution of sentence of adult persons convicted of crimes.

(6) Any order of the court may be modified at any time. In the case of a youth committed to the department of institutions, an order pertaining to

the youth may be modified only upon notice to the department and subsequent hearing.

(7) Whenever the court vests legal custody in an agency, institution, or department, it must transmit with the dispositional judgment copies of a medical report and such other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

(8) The order of commitment to the department of institutions shall read as follows:

ORDER OF COMMITMENT

State of Montana)
) ss.
County of .....)

In the district court for the .... Judicial District.

On the .... day of ...., 19.., ..., a minor of this county, ... years of age, was brought before me charged with ..... Upon due proof I find that .... is a suitable person to be committed to the department of institutions.

It is ordered that .... be committed to the department of institutions until .....

The names, addresses, and occupations of the parents are:

Name Address Occupation

.....

.....

The names and addresses of their nearest relatives are:

.....

.....

Witness my hand this .... day of ...., A.D. 19...

.....
Judge

History: En. 10-1222 by Sec. 22, Ch. 329, L. 1974; amd. Sec. 10, Ch. 571, L. 1977; R.C.M. 1947, 10-1222; amd. Sec. 2, Ch. 29, L. 1979; amd. Sec. 5, Ch. 246, L. 1979; amd. Sec. 2, Ch. 129, L. 1983; amd. Sec. 2, Ch. 233, L. 1983; amd. Sec. 27, Ch. 361, L. 1983; amd. Sec. 8, Ch. 363, L. 1983; amd. Sec. 5, Ch. 465, L. 1983; amd. Sec. 6, Ch. 531, L. 1985; amd. Sec. 1, Ch. 612, L. 1985; amd. Sec. 8, Ch. 14, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: Deleted in second version (3), (5), and (6) of the temporary version.

Effective Date: The 1986 amendment will be effective on the date the deed of sale of the Montana Youth Treatment Center from the Board of Land Commissioners is delivered to a buyer.

Repealer: Section 15, Ch. 14, Sp. L. June 1986, also repeals sections 53-21-164, 53-21-501, 53-21-502, and 53-21-505, effective upon the sale.

1985 Amendments: Chapter 531 inserted (7).

Chapter 612 in (2) near end, after "youths", deleted "except that if the evaluation is to be done at the Montana youth treatment center, the commitment provisions of 53-21-505 must be followed and no evaluation of a youth may be done at Montana state hospital"; inserted (3) through (6); and deleted former (6) that read: "Except as provided in 53-21-507, if the custody of a youth is transferred to the department of institutions under subsection (1), the youth may not be committed to the Montana youth treatment center unless the commitment provisions of 53-21-505 are followed."

1983 Amendments: Chapter 129, after (1)(e), inserted "or"; and in (4) (now (9)), inserted second sentence.

Chapter 233 deleted former (2)(b), which read: "in the case of a delinquent youth 16 years

or older whom the court considers a suitable person for placement at a youth forest camp, notify the director of the department of institutions of the finding. The director of the department of institutions shall then designate to the court the facility to which the youth shall be delivered for evaluation. The court may then commit the youth to the department of institutions for a period not to exceed 45 days for the purpose of evaluation as to the youth's suitability for placement and order the youth delivered for evaluation to the youth facility designated by the director. If after the evaluation the department of institutions reports to the court that such child is suitable for placement in a youth forest camp and if there is space available at a camp, the court may then commit such child directly to the youth forest camp under the terms of commitment of this chapter. If the department of institutions reports and states the reasons to the court why the youth is not suitable for placement, the youth shall be returned to the court for such further disposition as the court may consider advisable under the provisions of this chapter. The costs of transporting the youth to the designated youth facility for evaluation and cost of returning the youth to the court shall be borne by the county of residence of the youth."; and at end of (3) (now (8)), deleted "except as provided by subsection (2)(b)".

Chapter 363, at end of (2), inserted except clause (now deleted) and Ch. 361 substituted "Montana state hospital" for "Warm Springs state hospital" in that clause; Ch. 363 inserted (6) (now deleted).

Chapter 465 made the following changes: in (1)(b), substituted present language for "place in a licensed foster home or a home approved by the court"; at end of (1)(c), deleted "including but not limited to a district youth guidance home"; and at end of (1)(e), deleted "consistent with subsection (1)(d) of this section".

TITLE 44

LAW ENFORCEMENT

CHAPTER 1

HIGHWAY PATROL

Part 5

Salaries and Expenses

44-1-501. Payment of expenses. All expenses of the highway patrol shall be paid out of the highway department's account in the state special revenue fund.

History: En. Sec. 1, Ch. 285, L. 1971; R.C.M. 1947, 31-105.1; amd. Sec. 2, Ch. 7, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 4, Ch. 20, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: At beginning substituted "All expenses" for "All salaries of members".

Effective Date: The 1986 amendment was effective July 1, 1986.

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

Cross-References

Highway funds — state funds, Title 60, ch. 3, part 2.

TITLE 46

CRIMINAL PROCEDURE

CHAPTER 9

BAIL

Part 3
The Amount of Bail

46-9-301. Determining the amount of bail. In all cases that bail is determined to be necessary, bail must be reasonable in amount and the amount shall be:

(1) sufficient to ensure the presence of the defendant in a pending criminal proceeding;

(2) sufficient to assure compliance with the conditions set forth in the bail;

(3) sufficient to protect any person from bodily injury;

(4) not oppressive;

(5) commensurate with the nature of the offense charged;

(6) considerate of the financial ability of the accused;

(7) considerate of the defendant's prior record;

(8) considerate of the length of time the defendant has resided in the community and of his ties to the community;

(9) considerate of the defendant's family relationships and ties;

(10) considerate of the defendant's employment status; and

(11) sufficient to include the charge imposed in 46-18-236.

History: En. 95-1110 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1110; amd. Sec. 3, Ch. 692, L. 1985; amd. Sec. 2, Ch. 17, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: Inserted (11).

1985 Amendment: Inserted (1), (3), (8), (9), and (10); and in (7) at end, after "record", deleted "employment status, and family background".

CHAPTER 18

SENTENCE AND JUDGMENT

Part 2
Form of Sentence

46-18-236. Imposition of charge upon conviction or forfeiture — administration. (1) Except as provided in subsection (2), there must be imposed by all courts of original jurisdiction on a defendant upon his conviction for any conduct made criminal by state statute or upon forfeiture of

bond or bail a charge that is in addition to other taxable court costs, fees, or fines, as follows:

(a) $10 for each misdemeanor charge; and

(b) the greater of $20 or 10% of the fine levied for each felony charge.

(2) If a convicting court determines under 46-18-231 and 46-18-232 that the defendant is not able to pay the fine and costs or that he is unable to pay within a reasonable time, the court must waive payment of the charge imposed by this section.

(3) The charge imposed by this section is not a fine and must be imposed in addition to any fine and may not be used in determining the jurisdiction of any court.

(4) When the payment of a fine is to be made in installments over a period of time, the charge imposed by this section must be collected from the first payment made and each subsequent payment as necessary if the first payment is not sufficient to cover the charge.

(5) The charges collected under subsection (1) must be deposited with the appropriate local government finance officer or treasurer. If a city municipal court or city or town court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the city or town finance officer or treasurer. If a justice's court or district court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the county finance officer or treasurer. If the court of original jurisdiction is a court within a consolidated city-county government within the meaning of Title 7, chapter 3, the charges collected under subsection (1) must be deposited with the finance officer or treasurer of the consolidated government.

(6) (a) A city or town finance officer or treasurer may retain the charges collected under subsection (1) by a city municipal court or a city or town court and may use that money for the payment of salaries of the city or town attorney and his deputies.

(b) Each county finance officer or treasurer may retain the charges collected under subsection (1) by district or justices' courts for crimes committed or alleged to have been committed within that county. The county finance officer or treasurer shall use the money for the payment of salaries of its deputy county attorneys and for the payment of other salaries in the office of the county attorney, and any funds not needed for such salaries may be used for the payment of any other county salaries.

History: En. Sec. 1, Ch. 719, L. 1985; amd. Sec. 3, Ch. 17, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: In (1)(a) and (1)(b) substituted "for each" for "in each" and "charge" for "case"; in (3) inserted "and must be imposed in addition to any fine"; in (4) substituted present language for "The total of the charge imposed by this section and any fine assessed may not exceed the maximum fine authorized by law for the offense"; in (5) inserted last sentence; at beginning of (6) deleted "On or before the 10th day of each month, the county finance officer or treasurer shall remit to the state treasurer for deposit to the state general fund $10 for each misdemeanor case and the greater of $20 or 10% of the fine levied in each felony case. A county may retain up to 10% of the funds remitted to the state treasurer to cover only the costs of administering this section"; and inserted (6)(b).

TITLE 50

HEALTH AND SAFETY

CHAPTER 78

EMPLOYEE AND COMMUNITY HAZARDOUS CHEMICAL INFORMATION ACT

Part 2

Notice Required

50-78-202. Workplace chemical list. (1) Each employer shall compile and maintain a workplace chemical list. Except as provided in 50-78-205, the workplace chemical list must contain the chemical name of each hazardous chemical in the workplace, cross-referenced to any generally used common name. For chemical mixtures, the chemical name of each hazardous constituent indicated on the material safety data sheet must be provided in parentheses along with the chemical name. The chemical abstracts service registry number, if available from the material safety data sheet, must accompany all chemical names on the workplace chemical list.

(2) The workplace chemical list must indicate the work area in which each hazardous chemical is normally stored or used.

(3) The workplace chemical list may be prepared for the workplace as a whole or for each work area, provided the list is readily available to employees and their designated representatives.

(4) New or newly assigned employees must be made aware of the workplace chemical list before working with or in a work area containing hazardous chemicals.

(5) The workplace chemical list must be updated as necessary but not less than annually.

History: En. Sec. 6, Ch. 641, L. 1985; amd. Sec. 1, Ch. 15, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: Substituted present (1) for former (1) that read: "Each employer shall compile and maintain a workplace chemical list that must contain the following information for each hazardous chemical present in the workplace:

(a) except as provided in 50-78-205, all generally used common names of any hazardous chemical present in the workplace, cross-referenced to the chemical name; and

(b) the work area in which the hazardous chemical is normally stored or used"; and inserted (2).

Effective Date: The 1986 amendment was effective July 3, 1986.

Part 3

Information and Education

50-78-301. Emergency and community information. (1) An employer normally having hazardous chemicals in the workplace of his

employees shall record the following information with the clerk and recorder of the county in which the workplace is located:

(a) an acknowledged copy of each new annual workplace chemical list; and

(b) a list acknowledged by the employer of the names or titles and telephone numbers of knowledgeable representatives of the employer or the chemical manufacturer who can be contacted for further information or in case of an emergency.

(2) An employer may record a copy of a material safety data sheet for any hazardous chemical in the workplace.

(3) The county clerk and recorder shall record the information provided under subsection (1). The county clerk and recorder shall index the information provided under subsection (1) by workplace name, and all entries for a workplace must be grouped together in the index. The index must not be combined with any other type of index.

(4) All information submitted under subsection (1) is public information and must be available at the office of the county clerk and recorder during normal working hours to any person for inspection and copying at the expense of the person requesting copies.

(5) The local fire chief shall inspect all information maintained by the county clerk and recorder on workplace hazardous chemicals.

(6) The local fire chief must be permitted onsite inspection of hazardous chemicals in any workplace, including workplaces under the control of a state agency, for the purposes of planning fire department activities in case of an emergency and reviewing compliance with this chapter. For a workplace that employs fire safety personnel, the local fire chief shall consult with the responsible fire safety official to clarify respective roles and response procedures in the event of an emergency.

(7) As a result of an inspection, the local fire chief may note and report for possible action by the county attorney or other appropriate law enforcement official any violation by an employer of a provision of this chapter or any other law pertaining to hazardous chemicals or fire safety.

(8) The local fire chief shall consult at least annually on safety and emergency considerations with each person responsible for the operation of any research, educational, or testing laboratory workplace. The consultation may result in recommendations or, under the provisions of 50-62-108, orders by the fire chief to be implemented by the laboratory operator to enhance public safety, to reduce the likelihood of emergency incidents, or to improve emergency response in the event of an accident. The person responsible for the operation of the laboratory shall contact the local fire chief at any time there is a significant change in the location or nature of the hazardous chemicals in the workplace, initiation of any new and potentially dangerous method of processing or reacting hazardous chemicals, or any other operational change affecting emergency response considerations.

History: En. Sec. 9, Ch. 641, L. 1985; amd. Sec. 2, Ch. 15, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: In (1) at beginning deleted "Except as provided in subsection (2)", and in middle of introduction substituted "record" for "submit"; deleted former (1)(a) that read: "(a) a copy of the most current material safety data sheet certified by the employer for each hazardous chemical in the workplace"; and substituted present (2) for former (2) that read: "The county clerk and recorder shall record and update as necessary an index listing each hazardous chemical for which a material safety data sheet has been recorded in the county. The index must include the name of the employer

who recorded the material safety data sheet. No employer shall be required to record a material safety data sheet for any hazardous chemical for which a material safety data sheet has already been recorded by any employer in the county."

Effective Date: The 1986 amendment was effective July 3, 1986.

TITLE 53

SOCIAL SERVICES AND INSTITUTIONS

CHAPTER 1

GENERAL ADMINISTRATION OF INSTITUTIONS

Part 1
General Provisions

53-1-104. *(Temporary)* **Release of arsonist — notification of department of justice.** (1) Each of the following institutions or facilities having the charge or custody of a person convicted of arson or of a person acquitted of arson on the ground of mental disease or defect shall give written notification to the department of justice whenever such a person is admitted or released by it:

(a) Montana state hospital;
(b) State prison;
(c) Mountain View school;
(d) Pine Hills school;
(e) Swan River youth forest camp;
(f) Any county or city detention facility; or
(g) Montana youth treatment center.

(2) The notification shall disclose:

(a) the name of the person;
(b) where the person is or will be located; and
(c) the type of fire the person was involved in.

53-1-104. *(Effective as provided in Compiler's Comments)* **Release of arsonist — notification of department of justice.** (1) Each of the following institutions or facilities having the charge or custody of a person convicted of arson or of a person acquitted of arson on the ground of mental disease or defect shall give written notification to the department of justice whenever such a person is admitted or released by it:

(a) Montana state hospital;
(b) State prison;
(c) Mountain View school;
(d) Pine Hills school;
(e) Swan River youth forest camp; or
(f) Any county or city detention facility.

(2) The notification shall disclose:

(a) the name of the person;
(b) where the person is or will be located; and
(c) the type of fire the person was involved in.

History: En. 80-1403.1 by Sec. 1, Ch. 206, L. 1977; R.C.M. 1947, 80-1403.1; amd. Sec. 10, Ch. 361, L. 1983; amd. Sec. 9, Ch. 363, L. 1983; amd. Sec. 9, Ch. 14, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: Deleted in second version (1)(g) of the temporary version.

Effective Date: The 1986 amendment will be effective on the date the deed of sale of the Montana Youth Treatment Center from the Board of Land Commissioners is delivered to a buyer.

Repealer: Section 15, Ch. 14, Sp. L. June 1986, also repeals sections 53-21-164, 53-21-501, 53-21-502, and 53-21-505, effective upon the sale.

Code Commissioner Correction: Substituted department of justice for fire marshal bureau as entity to which notice is given because sections 3 and 4 of Ch. 503, L. 1985, deleted the language in 2-15-2005 creating the bureau.

1983 Amendments: Chapter 361 substituted "Montana state hospital" for "Warm Springs state hospital" in (1)(a).

Chapter 363 inserted (1)(g).

Part 2
Department of Institutions

53-1-202. *(Temporary)* **Institutions in department.** (1) The following institutions are in the department:

(a) Montana state hospital;
(b) Montana veterans' home;
(c) State prison;
(d) Mountain View school;
(e) Pine Hills school;
(f) Montana developmental center;
(g) Montana center for the aged;
(h) Swan River youth forest camp;
(i) Eastmont human services center;
(j) Montana youth treatment center; and
(k) Any other institution which provides care and services for juvenile delinquents, including but not limited to youth forest camps and juvenile reception and evaluation centers.

(2) A state institution may not be moved, discontinued, or abandoned without prior consent of the legislature.

53-1-202. *(Effective as provided in Compiler's Comments)* **Institutions in department.** (1) The following institutions are in the department:

(a) Montana state hospital;
(b) Montana veterans' home;
(c) State prison;
(d) Mountain View school;
(e) Pine Hills school;
(f) Montana developmental center;
(g) Montana center for the aged;
(h) Swan River youth forest camp;
(i) Eastmont human services center; and
(j) Any other institution which provides care and services for juvenile delinquents, including but not limited to youth forest camps and juvenile reception and evaluation centers.

(2) A state institution may not be moved, discontinued, or abandoned without prior consent of the legislature.

History: En. Sec. 3, Ch. 199, L. 1965; amd. Sec. 1, Ch. 320, L. 1967; amd. Sec. 1, Ch. 280, L. 1969; amd. Sec. 40, Ch. 120, L. 1974; R.C.M. 1947, 80-1403; amd. Sec. 174, Ch. 575, L. 1981; amd. Sec. 1, Ch. 132, L. 1983; amd. Sec. 11, Ch. 361, L. 1983; amd. Sec. 10, Ch. 363, L. 1983; amd. Sec. 2, Ch. 151, L. 1985; amd. Sec. 10, Ch. 14, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: Deleted in second version (1)(j) of the temporary version.

Effective Date: The 1986 amendment will be effective on the date the deed of sale of the Montana Youth Treatment Center from the Board of Land Commissioners is delivered to a buyer.

Repealer: Section 15, Ch. 14, Sp. L. June 1986, also repeals sections 53-21-164, 53-21-501, 53-21-502, and 53-21-505, effective upon the sale.

1985 Amendment: In (1)(f) changed "Boulder River school and hospital" to "Montana developmental center".

1983 Amendments: Chapter 132 substituted "Eastmont human services center" for "Eastmont training center" in (1)(i).

Chapter 361, in (1)(a), substituted "Montana state hospital" for "Galen state hospital"; and deleted former (1)(g), which read: "Warm Springs state hospital".

Chapter 363 inserted (1)(j).

1981 Amendment: Deleted reference to the Montana children's center.

Part 4

Per Diem Payments for Institutional Care

53-1-402. *(Temporary)* **Residents subject to per diem and ancillary charges.** The department shall collect and process per diem and ancillary payments for the care of residents in the following institutions:

(1) Montana state hospital;
(2) Montana developmental center;
(3) Montana veterans' home;
(4) Montana center for the aged;
(5) Eastmont human services center; and
(6) Montana youth treatment center.

53-1-402. *(Effective as provided in Compiler's Comments)* **Residents subject to per diem and ancillary charges.** The department shall collect and process per diem and ancillary payments for the care of residents in the following institutions:

(1) Montana state hospital;
(2) Montana developmental center;
(3) Montana veterans' home;
(4) Montana center for the aged;
(5) Eastmont human services center.

History: En. Sec. 13, Ch. 199, L. 1965; amd. Sec. 4, Ch. 320, L. 1967; amd. Sec. 1, Ch. 276, L. 1969; amd. Sec. 1, Ch. 191, L. 1971; amd. Sec. 52, Ch. 120, L. 1974; amd. Sec. 1, Ch. 450, L. 1977; R.C.M. 1947, 80-1601; amd. Sec. 2, Ch. 132, L. 1983; amd. Sec. 12, Ch. 361, L. 1983; amd. Sec. 11, Ch. 363, L. 1983; amd. Sec. 3, Ch. 151, L. 1985; amd. Sec. 11, Ch. 14, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: Deleted in second version (6) of the temporary version.

Effective Date: The 1986 amendment will be effective on the date the deed of sale of the Montana Youth Treatment Center from the Board of Land Commissioners is delivered to a buyer.

Repealer: Section 15, Ch. 14, Sp. L. June 1986, also repeals sections 53-21-164, 53-21-501,

53-21-502, and 53-21-505, effective upon the sale.

1985 Amendment: In (2) changed "Boulder River school and hospital" to "Montana developmental center".

1983 Amendments: Chapter 132 substituted "Eastmont human services center" for "Eastmont training center" in (5).

Chapter 361, in (1), substituted "Montana state hospital" for "Warm Springs state hospital"; and deleted former (3), which read: "Galen state hospital".

Chapter 363 inserted (6).

CHAPTER 3

GENERAL RELIEF

Part 1

General Provisions

53-3-108. Purpose. (1) The legislature, in order to implement the provisions of Article XII, section 3, of the Montana constitution, finds that certain persons are in need of assistance because of misfortune and must be provided with certain assistance through programs for general relief. These programs are to be efficiently administered by local county welfare boards or, whenever responsibility for local welfare programs has been assumed by the state of Montana, by the department of social and rehabilitation services. General relief, along with other assistance programs, is made available to provide basic necessities that provide minimum subsistence compatible with decency and health and to provide financial assistance for medical services necessary for serious medical conditions. General relief medical assistance is not intended to provide catastrophic medical insurance to nonindigent persons.

(2) The legislature finds that assistance under the general relief program should not be available to those persons who have either adequate income or resources of their own or who are able-bodied. When benefits and services are available through other federal or state assistance programs, general relief should not be provided in duplication of such other assistance.

(3) The legislature, in recognition of the need to expand the employment opportunities available to able-bodied persons who do not have dependent minor children, will provide 2 months of general relief so that such able-bodied persons may be eligible for the job readiness training authorized in 53-3-304(3).

(4) The legislature further finds that the purposes of the general relief program must be implemented only to the extent necessary and allowable by the mandates of Article VIII, sections 12 and 14, of the Montana constitution, regarding financial accountability and expenditure by appropriation.

History: En. Sec. 1, Ch. 670, L. 1985; amd. Sec. 1, Ch. 10, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: Inserted (3).

Effective Date: The 1986 amendment was effective June 30, 1986.

53-3-109. Definitions. For the purposes of this chapter, the following definitions apply:

(1) "Able-bodied" means the condition of a person who is not infirm.

(2) "Basic necessities" means food, shelter, utilities, and personal needs.

(3) "Department" means the department of social and rehabilitation services provided for in Title 2, chapter 15, part 22.

(4) "General relief" means, in accordance with this chapter, a program of public assistance for basic necessities and medical needs to those persons determined to be eligible for that assistance.

(5) "Household" means all persons who by choice, necessity, or legal relationship are mutually dependent upon each other for basic necessities and who reside in the same residence.

(6) "Income" means the value of all property of any nature, earned, unearned, or in-kind, including benefits reasonably certain to be received by or available to a household during the month of the receipt of the income.

(7) "Indigent" or "misfortunate" means a person who is lacking the means, financial or otherwise, by which to prevent destitution for himself and others dependent upon him for basic necessities and who is otherwise eligible for assistance under this chapter. Except as provided otherwise in 53-3-205 and 53-3-209, the terms do not include able-bodied persons unless they have dependent minor children living in the household.

(8) "Infirm" means the condition of a person who is diagnosed by a licensed medical practitioner and confirmed by an expert medical review to have a physical or mental handicap that significantly impairs the person's ability to be employed.

(9) "Lump-sum income" means a nonrecurring source of income received in a single payment by a household during any eligibility period, including but not limited to proceeds from a lawsuit, insurance settlement, inheritance, lump-sum retirement, veterans' or unemployment benefits; benefits received under the federal Social Security Act; prizes; and tax refunds.

(10) "Resource" means all real and personal property retained after the calendar month of its receipt and which the household or a member of the household has a legal right to sell or liquidate.

(11) "Secure facility" means any facility in which a person may be lawfully held against his will by federal, state, or local authorities.

(12) "Serious medical condition" means a physical condition that causes a serious health risk to a person and for which treatment is medically necessary, including pregnancy. Diagnosis and determination of necessary treatment must be made by a licensed medical practitioner, and the department may confirm it through an expert medical review. Necessary treatment includes prenatal care and such other elective treatments as determined by department rule to be medically necessary.

History: En. Sec. 2, Ch. 670, L. 1985; amd. Sec. 2, Ch. 10, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: In (7) in middle of second sentence after "persons" deleted "under the age of 50".

Effective Date: The 1986 amendment was effective June 30, 1986.

Part 2

Eligibility and Application for General Relief

53-3-205. Eligibility for general relief. (1) A person or persons constituting a household may receive general relief assistance for basic necessities

if the household is determined to be eligible under the provisions of this section and is in need of such assistance as a result of their infirmity, misfortune, or indigency.

(2) A household is eligible for general relief if the household income does not exceed that set forth in the following table:

Number of Persons in Household	Monthly Income Standard
1	$212
2	282
3	354
4	426
5	501
6	570
7	642
8	713
9	785
10 or more	857

(3) Able-bodied persons without dependent minor children living in the household are not eligible for nonmedical general relief assistance, except as provided in 53-3-209.

(4) (a) When the household's income exceeds the monthly income standard for a household of that size because of receipt of lump-sum income, the household will be ineligible for general relief for the full number of months, beginning with the month of receipt, derived by dividing the total of the lump-sum income and other income by the monthly income standard for a household of that size. Any income remaining from this calculation will be considered as income in the first month following the period of ineligibility.

(b) The period of ineligibility may be recalculated if the household size changes or if a portion of the lump sum was used to pay medical bills for a serious medical condition.

(c) Ineligibility due to the receipt of a lump sum does not preclude eligibility for general relief medical assistance.

(5) All applicants for and recipients of general relief assistance who reside in the same residence are considered as one household.

(6) Prospective income that is reasonably certain to be received by the household during an eligibility period must be considered when determining eligibility.

(7) The following resources of a household must be excluded from consideration of resources for eligibility purposes:

(a) the domicile of the household, including necessary appurtenant land not exceeding 10 acres;

(b) a motor vehicle that has no more than $1,500 in equity value;

(c) personal items, clothing, household furniture, appliances, and other essential household items, the total equity value of which does not exceed resource eligibility limits established by rule; and

(d) tools of a trade that are essential to the current or future employment of a household member.

(8) A person who is committed or sentenced by legal process to a state institution or a secure facility or who is incarcerated in a secure facility pending resolution of legal process is not eligible for general relief.

(9) A person who resides for a period of 1 day or more in any state or federally operated institution or residence is not eligible for general relief for the period of that residency.

(10) For the purposes of an eligibility determination, an applicant for or recipient of general relief may be requested to produce all financial and other information concerning the household.

(11) Whenever practical, an eligibility determination must be made within 30 days of the date of application and the applicant must be notified in writing of the eligibility determination and the reasons for the determination.

(12) An alien determined to be illegally within the United States is not eligible for general relief.

History: En. Sec. 4, Ch. 670, L. 1985; amd. Sec. 3, Ch. 10, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: In (2) substituted present income standards for:

"Number of Persons in Household	Monthly Income Standard	
	Fiscal 1986	Fiscal 1987
1	$212	$219
2	284	296
3	358	372
4	432	449
5	506	526
6	580	603
7	653	679
8	727	756
9	800	832
10 or more	874	909";

in (3) near beginning after "persons" deleted "under the age of 35 years" and at end inserted "except as provided in 53-3-209".

Effective Date: The 1986 amendment was effective June 30, 1986.

53-3-206. Eligibility for general relief medical assistance. (1) In order to be considered for eligibility for general relief medical assistance, a person must be found to have a serious medical condition.

(2) Eligibility for general relief medical assistance must be determined as provided in this section and 53-3-205. A person with a serious medical condition must apply for general relief medical assistance prior to the provision of medical services or within 90 days of the date the medical service is first provided. Eligibility is determined as of the date medical service is first provided.

(3) All persons who reside in the same residence and are legally related to or responsible for each other are considered to be one household for purposes of determining general relief medical assistance.

(4) All individual or household resources must be used to offset medical obligations except those excluded in 53-3-205(7).

(5) To determine eligibility for county general relief medical assistance, a county welfare board may promulgate rules to establish the circumstances under which persons are unable to pay for their medical aid and hospitalization. However, no household with an income exceeding 300% of the amount set forth in 53-3-205(2) is eligible for such medical assistance.

(6) In a county with state-assumed welfare services:

(a) covered medical services must be provided at no cost to the person residing in a household if the average household monthly income that is

reasonably certain to be received in a 12-month period beginning with the month the medical service was provided does not exceed the amount in 53-3-205(2);

(b) a person is not eligible for medical services if the household in which he resides has an average monthly income reasonably certain to be received in a 12-month period beginning with the month the medical service was provided in excess of that set forth in the following table:

Family Size	Monthly Income Level
1	$ 287
2	433
3	526
4	618
5	714
6	804
7	896
8	988
9	1,081
10	1,173
11	1,194
12	1,215
13	1,236
14	1,256
15	1,277
16 or more	1,298

(c) if the average household monthly income reasonably certain to be received in a 12-month period beginning with the month the medical service was provided is between the amount in 53-3-205(2) and the monthly income level set forth in subsection (b), a household must first incur covered medical costs equal to the difference between its average monthly income and the monthly income standard in 53-3-205(2) before medical assistance is provided.

History: En. Sec. 5, Ch. 670, L. 1985; amd. Sec. 4, Ch. 10, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: In (6)(b) substituted present income levels for:

"Family Size	Monthly Income Level
1	$ 314
2	375
3	400
4	425
5	501
6	564
7	624
8	685
9	744
10	804
11	864
12	923
13	983
14	1,042
15	1,102
16	1,162";

in (6)(c) substituted "monthly income standard in 53-3-205(2)" for "monthly income level in subsection (b)" and changed "medical service" to "medical assistance".

Effective Date: The 1986 amendment was effective June 30, 1986.

53-3-209. Period of eligibility. (1) The period of eligibility for receipt of general relief for basic necessities is 1 month, except as provided in subsections (2) and (3). A person may seek to establish eligibility for the succeeding month prior to the end of the current month of eligibility.

(2) Able-bodied persons without dependent minor children living in the household are eligible for no more than 2 months of nonmedical general relief assistance within any 12-month period, except that assistance received prior to November 1, 1986, shall not be counted.

(3) Eligibility for general relief medical assistance terminates when the serious medical condition of the person has been treated.

(4) The period of eligibility for any type of general assistance terminates at any time the county welfare board or the department determines that the household:

(a) no longer meets the applicable eligibility requirements; or

(b) received general relief by means of fraud or mistake.

History: **En. Sec. 10, Ch. 670, L. 1985; amd. Sec. 5, Ch. 10, Sp. L. June 1986.**

Compiler's Comments

1986 Amendment: In (2) near beginning after "persons" deleted "age 35 through 49", near middle changed "3 months" to "2 months", and near end changed "July 1, 1985" to "November 1, 1986"; at end of (2) deleted "For these persons who continuously meet eligibility criteria, the period of eligibility will begin 60 days after the date of application."

Effective Date: The 1986 amendment was effective June 30, 1986.

CHAPTER 21

MENTALLY ILL

Part 1

Treatment of the Seriously Mentally Ill

53-21-112. *(Temporary)* **Voluntary admission of minors.** (1) Notwithstanding any other provision of law, a minor who is 16 years of age or older may consent to receive mental health services to be rendered by:

(a) a facility that is not a state institution; or

(b) a person licensed to practice medicine or psychology in this state.

(2) Except as provided by this section, the provisions of 53-21-111 apply to the voluntary admission of a minor to a mental health facility but not to the state hospital or the Montana youth treatment center.

(3) Except as provided by this subsection, voluntary admission of a minor to a mental health facility for an inpatient course of treatment shall be for the same period of time as that for an adult. A minor voluntarily admitted shall have the right to be released within 5 days of his request as provided in 53-21-111(3). The minor himself may make such request. Unless there has been a periodic review and a voluntary readmission consented to by the minor patient and his counsel, voluntary admission terminates at the expiration of

1 year. Counsel shall be appointed for the minor at the minor's request or at any time he is faced with potential legal proceedings.

(4) If, in any application for voluntary admission for any period of time to a mental health facility, a minor fails to join in the consent of his parents or guardian to the voluntary admission, then the application for admission shall be treated as a petition for involuntary commitment. Notice of the substance of this subsection and of the right to counsel shall be set forth in conspicuous type in a conspicuous location on any form or application used for the voluntary admission of a minor to a mental health facility. The notice shall be explained to the minor.

53-21-112. *(Effective as provided in Compiler's Comments)* **Voluntary admission of minors.** (1) Notwithstanding any other provision of law, a minor who is 16 years of age or older may consent to receive mental health services to be rendered by:

(a) a facility that is not a state institution; or

(b) a person licensed to practice medicine or psychology in this state.

(2) Except as provided by this section, the provisions of 53-21-111 apply to the voluntary admission of a minor to a mental health facility but not to the state hospital.

(3) Except as provided by this subsection, voluntary admission of a minor to a mental health facility for an inpatient course of treatment shall be for the same period of time as that for an adult. A minor voluntarily admitted shall have the right to be released within 5 days of his request as provided in 53-21-111(3). The minor himself may make such request. Unless there has been a periodic review and a voluntary readmission consented to by the minor patient and his counsel, voluntary admission terminates at the expiration of 1 year. Counsel shall be appointed for the minor at the minor's request or at any time he is faced with potential legal proceedings.

(4) If, in any application for voluntary admission for any period of time to a mental health facility, a minor fails to join in the consent of his parents or guardian to the voluntary admission, then the application for admission shall be treated as a petition for involuntary commitment. Notice of the substance of this subsection and of the right to counsel shall be set forth in conspicuous type in a conspicuous location on any form or application used for the voluntary admission of a minor to a mental health facility. The notice shall be explained to the minor.

History: En. 38-1303 by Sec. 3, Ch. 466, L. 1975; amd. Sec. 3, Ch. 546, L. 1977; R.C.M. 1947, 38-1303(7) thru (9); amd. Sec. 14, Ch. 38, L. 1979; amd. Sec. 4, Ch. 547, L. 1979; amd. Sec. 12, Ch. 363, L. 1983; amd. Sec. 12, Ch. 14, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: At end of (2) in second version deleted "or the Montana youth treatment center".

Effective Date: The 1986 amendment will be effective on the date the deed of sale of the Montana Youth Treatment Center from the Board of Land Commissioners is delivered to a buyer.

Repealer: Section 15, Ch. 14, Sp. L. June 1986, also repeals sections 53-21-164, 53-21-501, 53-21-502, and 53-21-505, effective upon the sale.

1983 Amendment: At end of (1)(a), inserted "that is not a state institution"; and at end of (2), changed "or the state hospital" to "but not to the state hospital or the Montana youth treatment center".

53-21-164. *(Temporary)* **Treatment of children and young adults.** In addition to complying with all the other standards herein, the Montana youth

treatment center shall make special provisions for the treatment of patients who are children and young adults. These provisions shall include but are not limited to:

(1) opportunities for publicly supported education suitable to the educational needs of the patient. This program of education must, in the opinion of the attending professional person, be compatible with the patient's mental condition and his treatment program and otherwise be in the patient's best interest.

(2) a treatment plan which considers the chronological, maturational, and developmental level of the patient;

(3) sufficient professional persons, teachers, and staff members with specialized skills in the care and treatment of children and young adults;

(4) recreation and play opportunities, in the open air where possible, and appropriate residential facilities separate, wherever possible, from older patients;

(5) arrangements for contact between the facility and the family of the patient.

History: En. 38-1327 by Sec. 27, Ch. 466, L. 1975; R.C.M. 1947, 38-1327; amd. Sec. 13, Ch. 363, L. 1983.

Compiler's Comments

Repealer — Effective Date: Section 15, Ch. 14, Sp. L. June 1986, provided for the repeal of sections 53-21-164, 53-21-501, 53-21-502, and 53-21-505, effective on the date the deed of sale of the Montana Youth Treatment Center from the Board of Land Commissioners is delivered to a buyer.

1983 Amendment: In first sentence before "shall make", changed "a mental health facility" to "the Montana youth treatment center".

Part 5

Montana Youth Treatment Center

53-21-501. *(Temporary)* **Location and function of center.** There is a Montana youth treatment center located at Billings, Montana. The function of the center is the care, treatment, and evaluation of individuals who are 12 years of age or older and under 19 years of age who are committed pursuant to 53-21-505 or 41-5-523. The center is a mental health facility as defined in 53-21-102(6).

History: En. Sec. 1, Ch. 363, L. 1983; amd. Sec. 2, Ch. 612, L. 1985.

Compiler's Comments

Repealer — Effective Date: Section 15, Ch. 14, Sp. L. June 1986, provided for the repeal of sections 53-21-164, 53-21-501, 53-21-502, and 53-21-505, effective on the date the deed of sale of the Montana Youth Treatment Center from the Board of Land Commissioners is delivered to a buyer.

1985 Amendment: Substituted second sentence for "The function of the center is the care and treatment of persons between the ages of 12 and 18 years who have been found to be seriously mentally ill and who have been appropriately evaluated and committed to the center", and inserted third sentence.

53-21-502. *(Temporary)* **Rulemaking.** The department of institutions may adopt rules concerning the operation of the Montana youth treatment center and concerning the admission, treatment, and discharge of patients.

History: En. Sec. 5, Ch. 363, L. 1983.

Compiler's Comments

Repealer — Effective Date: Section 15, Ch. 14, Sp. L. June 1986, provided for the repeal of sections 53-21-164, 53-21-501, 53-21-502, and 53-21-505, effective on the date the deed of sale of the Montana Youth Treatment Center from the Board of Land Commissioners is delivered to a buyer.

53-21-505. *(Temporary)* **No voluntary admissions — commitment provisions.** (1) There may be no voluntary admissions or commitments to the Montana youth treatment center. All admissions to the center, other than those provided for in 41-5-523, must be by appropriate district court commitment, pursuant to the provisions of 53-21-114 through 53-21-127.

(2) The duration of the initial commitment to the treatment center is 3 months, and the commitment may be renewed or extended pursuant to the provisions of 53-21-128 for 6 months, and further extensions may be obtained under the same procedures as 53-21-128(2).

(3) In addition to the commitment procedures required in subsection (1), an individual must be at least 12 years of age but less than 18 years of age upon the date of his admission to the center.

History: En. Sec. 2, Ch. 363, L. 1983; amd. Sec. 3, Ch. 612, L. 1985.

Compiler's Comments

Repealer — Effective Date: Section 15, Ch. 14, Sp. L. June 1986, provided for the repeal of sections 53-21-164, 53-21-501, 53-21-502, and 53-21-505, effective on the date the deed of sale of the Montana Youth Treatment Center from the Board of Land Commissioners is delivered to a buyer.

1985 Amendment: In (1) in second sentence, near middle after "center", inserted "other than those provided for in 41-5-523"; in (2) near end after "6 months, and", substituted remainder of sentence for "then yearly thereafter"; and in (3) at beginning substituted "In addition to the commitment procedures required in subsection (1)" for "In addition to the determination by a district court that the individual is seriously mentally ill, as defined by 53-21-102", and after "individual", substituted "must be at least 12 years of age but less than" for "may not be under 12 years of age or more than".

CHAPTER 30

CORRECTIONS

Part 2

Youthful Offenders

53-30-202. Establishment of juvenile correctional facilities. The department of institutions, within the annual or biennial budgetary appropriation, may establish, maintain, and operate facilities to properly diagnose, care for, train, educate, and rehabilitate children in need of these services. The children must be 10 years of age or older and under 21 years of age. The facilities include but are not limited to the Mountain View school and the Pine Hills school but do not include the youth forest camp.

History: En. Sec. 8, Ch. 320, L. 1967; amd. Sec. 44, Ch. 120, L. 1974; amd. Sec. 44, Ch. 37, L. 1977; R.C.M. 1947, 80-1410; amd. Sec. 1, Ch. 381, L. 1985; amd. Sec. 3, Ch. 737, L. 1985; amd. Sec. 2, Ch. 11, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: Deleted former (2) that read: "Mountain View school may be used at any one time for the detention of no more than five male and three female youths under the age of 18 who are alleged to be delinquent youths. The superintendent shall establish a procedure to assure that this capacity for detention is not exceeded. Youths detained at the school are entitled to the educational and ancillary services normally provided to students at the school, subject to security provisions."

Effective Date: The 1986 amendment was effective July 1, 1986.

1985 Amendments: Chapter 381 in last sentence, after "Pine Hills school", substituted "but do not include" for "and".

Chapter 737 inserted (2) (now deleted).

53-30-211. *(Temporary)* **Transfer of child to other facility or institution — notice.** The department of institutions upon recommendation of the superintendent of a facility may transfer a child resident in one of its juvenile facilities to any other facility or institution under the jurisdiction and control of the department. However, except as provided for in 53-21-130, no youth may be transferred to the Montana youth treatment center without following the commitment procedures of 53-21-505.

53-30-211. *(Effective as provided in Compiler's Comments)* **Transfer of child to other facility or institution — notice.** The department of institutions upon recommendation of the superintendent of a facility may transfer a child resident in one of its juvenile facilities to any other facility or institution under the jurisdiction and control of the department.

History: En. Sec. 53, Ch. 199, L. 1965; amd. Sec. 16, Ch. 320, L. 1967; R.C.M. 1947, 80-2209; amd. Sec. 25, Ch. 361, L. 1983; amd. Sec. 14, Ch. 363, L. 1983; amd. Sec. 10, Ch. 151, L. 1985; amd. Sec. 13, Ch. 14, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: Deleted in second version last sentence of the temporary version.

Effective Date: The 1986 amendment will be effective on the date the deed of sale of the Montana Youth Treatment Center from the Board of Land Commissioners is delivered to a buyer.

Repealer: Section 15, Ch. 14, Sp. L. June 1986, also repeals sections 53-21-164, 53-21-501, 53-21-502, and 53-21-505, effective upon the sale.

1985 Amendment: In (2) (now expired pursuant to 1983 amendment) changed "Boulder River school and hospital" to "Montana developmental center".

1983 Amendments: Chapter 361, in former (2) substituted "Montana state hospital" for "Warm Springs state hospital".

Chapter 363 inserted last sentence; and deleted former (2) that read: "In the case of transfers of children in juvenile facilities to Warm Springs state hospital or Boulder River school and hospital and unless medical or psychiatric emergency exists, 15 days prior to the transfer the department shall send notice of the proposed transfer to the parents or legal guardian of the child and to the district court who committed the child. In the case of an emergency transfer, the department shall send notice within 72 hours after the time of transfer."

TITLE 60

HIGHWAYS AND TRANSPORTATION

CHAPTER 3

DISTRIBUTION AND APPORTIONMENT OF HIGHWAY FUNDS

Part 2

State Funds

Part Cross-References

Allocation of state funds for public transportation, 7-14-102.

Payment of cost of weed control program, 7-22-2144.

Disposal of coal severance taxes — coal area highway improvement, 15-35-108.

Expenses of Highway Patrol to be paid out of Highway Department's account in state special revenue fund, 44-1-501.

60-3-216. Highway reconstruction trust account. (1) There is a highway reconstruction trust account created in the state special revenue fund.

(2) The highway reconstruction trust fund account consists of allocations:

(a) from the taxes collected pursuant to 15-35-103 for each fiscal year beginning on or after July 1, 1986, and ending on or before June 30, 1993, the amounts allocated to the account pursuant to 15-35-108; and

(b) from the taxes collected pursuant to 15-70-204 and 15-70-321, for each fiscal year beginning on or after July 1, 1983, and ending on or before June 30, 1993, in an amount that will equal appropriated expenditures. *(Terminates July 1, 1993—sec. 7, Ch. 541, L. 1983.)*

History: En. Sec. 1, Ch. 541, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 5, Ch. 20, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: In (2) before "allocations" deleted "the following"; deleted former (2)(b) that read: "for each fiscal year beginning on or after July 1, 1983, and ending on or before June 30, 1993, all money received from the state treasurer pursuant to 17-3-201"; and in (2)(b) after "1993" substituted present language for "an amount that, when added to the amount received pursuant to subsections (2)(a) and (2)(b), will equal appropriated expenditures".

Effective Date: The 1986 amendment was effective July 1, 1986.

1983 Amendment: In (1), substituted "state special revenue fund" for "earmarked revenue fund".

TITLE 61

MOTOR VEHICLES

CHAPTER 3

CERTIFICATES OF OWNERSHIP, REGISTRATION, AND TAXATION OF MOTOR VEHICLES

Part 5

Taxes and Fees

61-3-536. *(Temporary)* **State aid for local government.** (1) Each county treasurer shall compute:

(a) the total amount received during the period from January 1, 1981, to December 31, 1981, for property taxes on automobiles and trucks having a rated capacity of three-quarters of a ton or less, denoted CT;

(b) the total amount that would have been received during the same period if the license fee system, excluding the block grant fee allocated to local governments under 61-3-509(3), had been in effect, denoted CF; and

(c) the number of light vehicles registered in the county on December 31, 1981, denoted NC.

(2) The three quantities, CT, CF, and NC, shall be certified to the department of revenue by February 1, 1982. The department shall compute for each county a quantity called county revenue loss, denoted CRL, and county loss per vehicle, denoted CLV, and defined as follows:

(a) CRL = larger of:
(i) 0; or
(ii) CT - CF;
(b) CLV = CRL/NC.

(3) In order to be eligible for reimbursement payment, a light vehicle must be such that it would have been subject to ad valorem tax if it had been registered prior to January 1, 1982.

(4) Prior to February 1 of year denoted Y, the department of justice shall determine and certify to the department the number of eligible light vehicles registered in each county on December 31 of the prior year, denoted NC(Y). Prior to March 1 of year Y, the department of revenue shall transmit to the department of commerce the amount of CLV x NC(Y) for each county.

(5) On March 1 of year Y, the department of commerce shall, to the extent funds are available, transmit to each county treasurer a warrant in the amount of CLV x NC(Y). If revenues are not sufficient to fully fund the general purpose block grant, the department of commerce shall prorate the available funds against the amount of CLV x NC(Y) certified for all counties.

(6) Upon receipt of the payment provided for in subsection (5), the county treasurer shall credit the payment to a motor vehicle suspense fund and, at some time between March 15 and March 30, shall distribute the payment in the same manner as funds are distributed to the taxing jurisdictions as provided in 61-3-509.

61-3-536. *(Effective July 1, 1987)* **State aid for local government.** (1) Each county treasurer shall compute:

(a) the total amount received during the period from January 1, 1981, to December 31, 1981, for property taxes on automobiles and trucks having a rated capacity of three-quarters of a ton or less, denoted CT;

(b) the total amount that would have been received during the same period if the license fee system had been in effect, denoted CF; and

(c) the number of light vehicles registered in the county on December 31, 1981, denoted NC.

(2) The three quantities, CT, CF, and NC, shall be certified to the department of revenue by February 1, 1982. The department shall compute for each county a quantity called county revenue loss, denoted CRL, and county loss per vehicle, denoted CLV, and defined as follows:

(a) CRL = larger of:
(i) 0; or
(ii) CT - CF;
(b) CLV = CRL/NC.

(3) In order to be eligible for reimbursement payment, a light vehicle must be such that it would have been subject to ad valorem tax if it had been registered prior to January 1, 1982.

(4) Prior to February 1 of year denoted Y, the department of justice shall determine and certify to the department the number of eligible light vehicles registered in each county on December 31 of the prior year, denoted NC(Y). Prior to March 1 of year Y, the department of revenue shall transmit to the department of commerce the amount of CLV x NC(Y) for each county.

(5) On March 1 of year Y, the department of commerce shall, to the extent funds are available, transmit to each county treasurer a warrant in the amount of CLV x NC(Y). If revenues are not sufficient to fully fund the general purpose block grant, the department of commerce shall prorate the available funds against the amount of CLV x NC(Y) certified for all counties.

(6) Upon receipt of the payment provided for in subsection (5), the county treasurer shall credit the payment to a motor vehicle suspense fund and, at some time between March 15 and March 30, shall distribute the payment in the same manner as funds are distributed to the taxing jurisdictions as provided in 61-3-509.

History: En. Sec. 6, Ch. 614, L. 1981; amd. Sec. 2, Ch. 115, L. 1983; amd. Sec. 10, Ch. 708, L. 1983; amd. Sec. 3, Ch. 702, L. 1985; amd. Sec. 2, Ch. 1, Sp. L. 1985; amd. Sec. 7, Ch. 30, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: In (4) substituted "department of justice" for "county treasurer" and "in each county" for "in the county"; in (5) in first sentence inserted "to the extent funds are available" and inserted second sentence.

Effective Date: The 1986 amendment was effective July 16, 1986.

1985 Amendments: Chapter 702 in (1)(b) after "fee system" inserted "excluding the additional fee allocated to local governments under 61-3-509(3)".

Section 2, Ch. 1, Sp. L. 1985, substituted "block grant fee" for "additional fee".

Amendments terminate July 1, 1987 (sec. 4. Ch. 702, L. 1985; sec. 12, Ch. 1, Sp. L. 1985).

1983 Amendments: Chapter 115 inserted (3); in (4), inserted "eligible" before "light vehicles".

Chapter 708 inserted second sentence of (4) relating to transmission of funds from Department of Revenue to Department of Commerce; and in (5) after "department" inserted "of commerce".

TITLE 69

PUBLIC UTILITIES AND CARRIERS

CHAPTER 1

STRUCTURE AND ORGANIZATION OF STATE AGENCIES

Part 4

Funding of Department of Public Service Regulation

69-1-401. *(Temporary)* **Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of public service regulation provided for in Title 2, chapter 15, part 26.

(2) "Regulated companies" means all organizations, corporations, associations, or other public or private entities which now are or may hereafter become subject to regulation in any manner by the department of public service regulation, the public service commission, or any successor agency. The term does not include motor carriers regulated pursuant to Title 69, chapter

12. *(Effective July 1, 1986, and terminates July 1, 1987—sec. 7, Ch. 32, Sp. L. June 1986.)*

History: En. Sec. 1, Ch. 32, Sp. L. June 1986.

69-1-402. *(Temporary)* **Funding of the department of public service regulation.** (1) There is an account in the state special revenue fund to which all fees collected under this section must be deposited and from which all appropriations to the department must be paid. An appropriation to the department may consist of a base appropriation for regular operating expenses and a contingency appropriation for expenses due to an unanticipated caseload.

(2) In addition to all other licenses, fees, and taxes imposed by law, all regulated companies shall, within 90 days after the close of each calendar quarter, pay to the department of revenue a fee based on a percentage of gross operating revenue reported pursuant to 69-1-223(2)(a), as determined by the department of revenue under 69-1-403.

(3) The amount of money that may be raised by the fee on the regulated companies during a fiscal year may not be increased from the amount appropriated to the department by the legislature for that fiscal year, including both base and contingency appropriations. Any additional money required for operation of the department must be obtained from other sources in a manner authorized by the legislature. *(Effective July 1, 1986, and terminates July 1, 1987—sec. 7, Ch. 32, Sp. L. June 1986.)*

History: En. Sec. 2, Ch. 32, Sp. L. June 1986.

69-1-403. *(Temporary)* **Determination and collection of fee.** (1) The fee provided for in 69-1-402 to be paid by regulated companies must be determined in the manner set forth in 69-1-224 for determining the consumer counsel fee.

(2) The fee provided for in 69-1-402 may be computed and collected in the manner provided in 69-1-225 through 69-1-227.

(3) All fees paid by a regulated company pursuant to this section are immediately recoverable by the regulated company in its rates and charges. Within 30 days after the issuance by the department of revenue of notices required by 69-1-224(1) and (2), the public service commission shall by separate order authorize each regulated company to fully recover in its rates and charges, on an annual basis, the fees levied by this part. *(Effective July 1, 1986, and terminates July 1, 1987—sec. 7, Ch. 32, Sp. L. June 1986.)*

History: En. Sec. 3, Ch. 32, Sp. L. June 1986.

Compiler's Comments

Determination of Fiscal Year 1987 Fee: Section 4, Ch. 32, Sp. L. June 1986, provided: "(1) For purposes of funding the department, to compute the percentage described in 69-1-224(1)(b) for fiscal year 1987, the department of revenue shall determine the total gross operating revenue generated by all regulated activities within this state for all regulated companies during the first three quarters of fiscal year 1986, based on the information filed pursuant to 69-1-223(2)(a).

(2) The department of revenue shall then compute the percentage, subject to revision as provided in 69-1-224(3), of the amount determined in subsection (1) that will produce an amount equal to the base appropriation to the department for fiscal year 1987, except that no regulated company owned and operated by any municipal corporation within this state may be required to pay a sum in excess of 0.06 of 1% of its gross operating revenue. The fiscal year 1987 appropriation to the department must be collected through the three quarterly installments

of fees collected hereunder during fiscal year 1987.

(3) The department of revenue shall by August 15, 1986, give notice by mail to each regulated company of the percentage determined under subsection (2) to be applied to the gross operating revenue reported under 69-1-223(2)(a) to determine the amount of the fee to be paid in fiscal year 1987.

(4) All fees paid by a regulated company pursuant to this section must be immediately recoverable by the regulated company in its rates and charges. Within 30 days after the issuance by the department of revenue of notices required by subsection (3), the public service commission shall by separate order authorize each regulated company to fully recover in its rates and charges, on an annual basis, the fees levied by [this act]." Under section 7 of Ch. 32, section 4 was effective July 1, 1986, and terminates July 1, 1987.

69-1-404. *(Temporary)* **Annual review by legislative finance committee.** (1) The legislative finance committee shall annually review the department's budget and the calculations made by the department of revenue in the determination of the fee pursuant to 69-1-403.

(2) The legislative finance committee shall report the results of its review to each regular session of the legislature and shall include in its report any recommendations concerning the manner of funding the department. *(Effective July 1, 1986, and terminates July 1, 1987—sec. 7, Ch. 32, Sp. L. June 1986.)*

History: En. Sec. 5, Ch. 32, Sp. L. June 1986.

TITLE 75

ENVIRONMENTAL PROTECTION

CHAPTER 1

ENVIRONMENTAL POLICY AND PROTECTION GENERALLY

Part 11

Environmental Contingency Grant Program

75-1-1101. Environmental contingency account objectives. (1) There is created an environmental contingency account within the state special revenue fund established in 17-2-102. The environmental contingency account is controlled by the governor.

(2) Except as provided in subsection (5), at the beginning of each fiscal year, 5% of the funds appropriated to the department of natural resources and conservation from the resource indemnity trust interest account, not to exceed $175,000 in fiscal year 1987, must be allocated to the environmental contingency account.

(3) Funds are statutorily appropriated, as provided in 17-7-502, from the environmental contingency account upon the authorization of the governor to meet unanticipated public needs consistent with the following objectives:

(a) to support water development projects in communities that face an emergency or imminent need for such services or to prevent the physical failure of a water project;

(b) to preserve vegetation, water, soil, fish, wildlife, or other renewable resources from an imminent physical threat or during an emergency, not including:

(i) natural disasters adequately covered by other funding sources; or

(ii) fire;

(c) to respond to an emergency or imminent threat to persons, property, or the environment caused by mineral development; and

(d) to fund the environmental quality protection fund provided for in 75-10-704 or to take other necessary actions, including the construction of facilities, to respond to actual or potential threats to persons, property, or the environment caused by hazardous wastes or other hazardous materials.

(4) The environmental contingency account may receive no additional allocation for any fiscal year in which the balance in the account exceeds $1,000,000 at the beginning of that fiscal year.

(5) Interest from funds in the environmental contingency account accrues to the resource indemnity trust interest account.

(6) The governor shall submit to the legislature at the beginning of each regular session a complete financial report on the environmental contingency account, including a description of all expenditures made since the preceding report.

History: En. Sec. 4, HB 922, L. 1985; amd. Sec. 5, HB 30, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: In (2) following "indemnity trust interest account" inserted "not to exceed $175,000 in fiscal year 1987".

Effective Date: The 1986 amendment was effective June 30, 1986.

TITLE 90

PLANNING, RESEARCH, AND DEVELOPMENT

CHAPTER 4

ENERGY DEVELOPMENT AND CONSERVATION

Part 1

Renewable Energy Sources Research and Development

90-4-103. Alternative energy and energy conservation research development and demonstration account established — allocation of funds. (1) There is within the state special revenue fund an alternative energy and energy conservation research development and demonstration account. Moneys are paid into this account under 15-35-108. The state treasurer shall draw warrants payable from this account upon order of the department.

(2) Each fiscal year the department shall allocate the funds appropriated from the alternative energy and energy conservation research development and demonstration account for the following:

(a) grants under 90-4-104 and 90-4-106;
(b) loans under 90-4-104 and 90-4-106;
(c) grants to state governmental units under 90-4-109;
(d) program administration; and
(e) matching federal energy programs and petroleum violation escrow account money if consistent with the purposes of this chapter.

(3) To assure that the program offers the greatest possible benefits during the fiscal year, the department may reallocate funds among the categories specified in this section based on the availability of funds or the applications it receives and the department's evaluation of the relative merits of each project.

History: (1)En. 84-7409 by Sec. 3, Ch. 501, L. 1975; R.C.M. 1947, 84-7409; amd. Sec. 3, Ch. 98, L. 1983; amd. Sec. 1, Ch. 277, L. 1983; (2), (3)En. Sec. 4, Ch. 8, Sp. L. June 1986.

Compiler's Comments

1986 Enactment: Subsections (2) and (3) were enacted by sec. 4, Ch. 8, Sp. L. June 1986.

Effective Date: The 1986 enactment was effective June 30, 1986.

Abeyance: Section 4(3), Ch. 8, Sp. L. June 1986, provided: "From July 1, 1986, through June 30, 1987, the department may elect not to allocate any funds or accept any applications for the purpose of making grant or loan awards under this part."

Transfer: Section 5, Ch. 8, Sp. L. June 1986, provided: "(1) On June 30, 1986, $1,000,000 of the money available to the department of natural resources and conservation in the alternative energy and energy conservation research development and demonstration account of the state special revenue fund must be transferred to the general fund.

(2) On or before June 30, 1987, $350,000 of the money available to the department of natural resources and conservation in the alternative energy and energy conservation research development and demonstration account of the state special revenue fund must be transferred to the general fund."

1983 Amendments: Chapter 98 in first sentence of (1) inserted "and energy conservation" after "alternative energy".

Chapter 277 in first sentence of (1) substituted reference to state special revenue fund for reference to earmarked revenue fund.

90-4-104. General powers of department. The department may:
(1) employ a staff adequate to administer this part;
(2) retain professional consultants and advisors;
(3) adopt rules governing applications, granting, administration, and repayment of funds;
(4) adopt rules governing applications for and administration and awarding of loans;
(5) adopt rules governing the application for and administration and awarding of grants to state governmental units under 90-4-109;
(6) adopt rules governing the repayment of grants to state governmental units and the reduction of agency budgets under 90-4-109;
(7) consider applications and award grants or loans, subject to the availability of funds and to the appropriation of such funds by the legislature, from the alternative energy and energy conservation research development and demonstration funds for projects that will further the purposes of this part;
(8) appoint an alternative energy advisory committee composed of representatives of state agencies and citizen members with expertise in alternative energy and energy conservation matters. The appointment of any such advisory committee shall be in keeping with 2-15-122.

History: En. 84-7410 by Sec. 5, Ch. 501, L. 1975; R.C.M. 1947, 84-7410; amd. Sec. 2, Ch. 356, L. 1981; amd. Sec. 4, Ch. 98, L. 1983; amd. Sec. 2, Ch. 730, L. 1985; amd. Sec. 1, Ch. 8, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: Inserted (6).

Effective Date: The 1986 amendment was effective June 30, 1986.

1985 Amendment: In (3) after "granting", inserted "administration, and repayment"; and inserted (5).

1983 Amendment: In (5) (now (7)) and (6) (now (8)), inserted "and energy conservation" after "alternative energy".

1981 Amendment: Inserted subsection (4); deleted "for grants" after "applications" in (5) (now (7)); inserted "or loans" after "award grants" in (5) (now (7)).

90-4-109. State governmental unit grants. (1) (a) The department may award grants from the alternative energy and energy conservation research development and demonstration account to state governmental units. These grants must be used to further the purposes of this part by providing money for state governmental units for energy conservation measures.

(b) State governmental units must apply to the department for grants.

(c) The department shall prescribe the form for applications and develop criteria for awarding grants under this section, including provisions requiring matching funds or repayment of grant funds to the alternative energy and energy conservation research development and demonstration account.

(d) Each agency awarded a grant shall either repay the grant or reduce its budget commensurate with the documented energy savings resulting from the grant.

(2) All grants awarded under this section must be administered by the department of administration according to Title 18, chapter 2.

History: En. Sec. 4, Ch. 730, L. 1985; amd. Sec. 2, Ch. 8, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: In (1)(a) at beginning deleted "Prior to July 1, 1987"; inserted (1)(d); and substituted present (2) for former (2) that read: "(2) (a) After June 30, 1987, the department may award grants from the alternative energy and energy conservation development and demonstration account to such state governmental units that have had projects approved by the legislature.

(b) (i) State governmental units must apply to the department for grants.

(ii) The department shall prescribe the form for applications and develop criteria for prioritizing grants.

(iii) The department shall prioritize grant applications submitted to it and shall submit its recommendations on the granting of awards to state governmental units with its budget request as provided in 17-7-111. The recommendations must include the names of proposed projects, their cost, and the expected annual energy savings, if any, resulting from the grant.

(c) Each agency awarded a grant by the legislature under the provisions of subsection (2) will have its budget reduced commensurate with the estimated energy savings resulting from the grant."

Effective Date: The 1986 amendment was effective June 30, 1986.

90-4-111. Biennial report. The department shall monitor the grants awarded under 90-4-106 and 90-4-109 and shall report its expenditures and other information concerning the implementation and effectiveness of specific projects or programs for which grants were awarded under this part to the legislature at the beginning of each regular legislative session.

History: En. 84-7413 by Sec. 8, Ch. 501, L 1975; R.C.M. 1935, 84-7413; amd. Sec. 2, Ch. 402, L. 1981; Sec. 90-4-107, MCA 1983; redes. 90-4-111 by Code Commissioner, 1985; amd. Sec. 3, Ch. 8, Sp. L. June 1986.

Compiler's Comments

1986 Amendment: Near beginning inserted "under 90-4-106 and 90-4-109".

Effective Date: The 1986 amendment was effective June 30, 1986.

1981 Amendment: Inserted "shall monitor the grants awarded and" after "department"; and changed "other activities" to "other information concerning the implementation and effectiveness of specific projects or programs for which grants were awarded".

CHAPTER 6

COMMUNITY IMPACT — PLANNING AND ABATEMENT

Part 2

Coal Impacts — Evaluation and Abatement Funding

90-6-205. *(Temporary)* **Coal board — general powers.** The board may:

(1) retain professional consultants and advisors;

(2) adopt rules governing its proceedings;

(3) consider applications for grants from the local impact and education trust fund account;

(4) consider applications for loans from the local impact and education trust fund account for periods and interest rates to be determined by the board; and

(5) award grants and loans, subject to 90-6-207, not to exceed in any one year the revenue paid into the local impact and education trust fund account, less the appropriation provided in section 1, Chapter 5, Special Laws of June 1986. After June 30, 1987, the board may not exceed in any one year seven-fifteenths of the revenue paid into the local impact and education trust fund account. The board may award grants and loans:

(a) to local governmental units, state agencies, and governing bodies of federally recognized Indian tribes to assist local governmental units and federally recognized Indian tribes in meeting the local impact of coal development by enabling them to adequately provide governmental services and facilities which are needed as a direct consequence of coal development; and

(b) notwithstanding the provisions of 90-6-207, to the department of highways established in 2-15-2501 to expedite the construction, repair, and maintenance of deficient sections of highway within the area designated in 90-6-210 if the deficiency is the direct result of increased traffic accompanying the development of coal resources; and

(c) provided that as used in this subsection (5), "revenue paid" does not include interest income from the account reinvested in the account in trust for the public schools and the university system. Grants and loans may be from current allocations only, and no part of the principal or income of the trust referred to in 90-6-211 may be used for this purpose. The money derived from loan repayments, including the interest thereon, must be deposited to the credit of the local impact fund referred to in 90-6-202.

(6) award a grant to a local government unit for the purpose of paying for part or all of the credit that the local government unit is obligated to give to a major new industrial facility that has prepaid property taxes under 15-16-201. The board must award the grant in accordance with 90-6-206.

90-6-205. *(Effective July 1, 1987)* **Coal board — general powers.** The board may:

(1) retain professional consultants and advisors;

(2) adopt rules governing its proceedings;

(3) consider applications for grants from the local impact and education trust fund account;

(4) consider applications for loans from the local impact and education trust fund account for periods and interest rates to be determined by the board; and

(5) award grants and loans, subject to 90-6-207, not to exceed in any one year seven-elevenths and after June 30, 1979, seven-fifteenths of the revenue paid into the local impact and education trust fund account:

(a) to local governmental units, state agencies, and governing bodies of federally recognized Indian tribes to assist local governmental units and federally recognized Indian tribes in meeting the local impact of coal development by enabling them to adequately provide governmental services and facilities which are needed as a direct consequence of coal development; and

(b) notwithstanding the provisions of 90-6-207, to the department of highways established in 2-15-2501 to expedite the construction, repair, and maintenance of deficient sections of highway within the area designated in 90-6-210 if the deficiency is the direct result of increased traffic accompanying the development of coal resources; and

(c) provided that as used in this subsection (5), "revenue paid" does not include interest income from the account reinvested in the account in trust for the public schools and the university system. Grants and loans may be from current allocations only, and no part of the principal or income of the trust referred to in 90-6-211 may be used for this purpose. The money derived from loan repayments, including the interest thereon, must be deposited to the credit of the local impact fund referred to in 90-6-202.

(6) award a grant to a local government unit for the purpose of paying for part or all of the credit that the local government unit is obligated to give to a major new industrial facility that has prepaid property taxes under 15-16-201. The board must award the grant in accordance with 90-6-206.

History: En. 50-1706 by Sec. 7, Ch. 502, L. 1975; amd. Sec. 3, Ch. 540, L. 1977; R.C.M. 1947, 50-1806(part); (6)En. Sec. 1, Ch. 250, L. 1983; amd. Sec. 1, Ch. 690, L. 1983; amd. Sec. 1, Ch. 619, L. 1985; amd. Sec. 2, Ch. 715, L. 1985; amd. Sec. 2, Ch. 733, L. 1985; amd. Sec. 2, Ch. 5, Sp. L. June 1986; amd. Sec. 2, Ch. 19, Sp. L. June 1986.

Compiler's Comments

1986 Amendments: Chapter 5 in (5) at end of introductory clause of temporary version inserted "less the appropriation provided in section 1, Chapter 5, Special Laws of June 1986".

Chapter 19 in (5) in introductory clause of temporary version substituted present language, except for Chapter 5 amendment, for "(5) award grants and loans, subject to 90-6-207, not to exceed in any one year seven-elevenths and after June 30, 1979, and before July 1, 1985, seven-fifteenths and after June 30, 1985, 23.08% of the revenue paid into the local impact and education trust fund account, less the appropriation provided in section 1, Chapter 733, Laws of 1985".

Effective Dates: Chapter 5 was effective June 30, 1986. Chapter 19 was effective July 10, 1986, and applies to coal mined after April 1, 1986.

Appropriation: Section 1 of Chapter 5 provided: "(1) There is appropriated to the state general fund from any money in the local impact and education trust fund account established under 90-6-202 and available to the Coal Board for grants and loans under 90-6-206:

(a) $680,000 for the fiscal year ending June 30, 1986; and

(b) $1,000,000 for the fiscal year ending June 30, 1987.

(2) Money appropriated in:

(a) subsection (1)(a) is for use in the fiscal year beginning July 1, 1985, and is exempt from the provisions of 17-7-304; and

(b) subsection (1)(b) is for use in the fiscal year beginning July 1, 1986, and is exempt from the provisions of 17-7-304."

1985 Amendments: Chapter 619 inserted (5)(b); and at beginning of (5)(c), made minor changes in phraseology due to subsection rearrangement.

Chapter 715 in (5) of temporary version near beginning inserted "and before July 1, 1985" and inserted "and after June 30, 1985, 23.08%". Amendment effective May 10, 1985, applicable to coal mined on or after April 1, 1985, and terminates July 1, 1987 (secs. 4 and 5, Ch. 715, L. 1985).

Chapter 733 in (5) of temporary version near beginning of first sentence, inserted "less the appropriation provided in section 1, Chapter 733, Laws of 1985". Amendment terminates July 1, 1986 (sec. 4. Ch. 733, L. 1985).

1983 Amendments: Chapter 250 enacted (6).

Chapter 690 made the following changes: inserted (4); in opening clause of (5), after "grants" inserted "and loans"; in (5)(a) inserted references to federally recognized Indian tribes and governing bodies thereof; and inserted last two sentences of (5)(c).

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RULES OF APPELLATE PROCEDURE

Effective January 19, 1987

At the request of Chief Justice J.A. Turnage, the Rules of Appellate Procedure, as amended by Supreme Court Order of June 16, 1986, and effective January 19, 1987, are reprinted in their entirety. Please note that the amendments to the rules clarify that the rules apply to criminal cases, as well as civil cases.

TITLE 25

CIVIL PROCEDURE

CHAPTER 21

RULES OF APPELLATE PROCEDURE

I. Applicability of Rules

Rule
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2. What the court may review on an appeal from a judgment.
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42. Renumbered Rule 52.
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Appendix of Forms

Form
1. Notice of appeal to the supreme court of the state of Montana from a judgment or order of a district court.
2. Affidavit to accompany motion for leave to appeal in forma pauperis.

Chapter Cross-References

Supreme Court jurisdiction, Art. VII, sec. 2, Mont. Const.

Courts and judicial officers generally, Title 3, ch. 1.

Supreme Court, Title 3, ch. 2.

Appeal to Supreme Court, Title 25, ch. 12.

Appeal from District Court to Supreme Court, Rule 72, M.R.Civ.P. (see Title 25, ch. 20).

Criminal appeals, Title 46, ch. 20.

I. Applicability of Rules

Rule 1. Scope of rules — from what judgment or order an appeal may be taken.

(a) These rules govern procedure in appeals in civil and criminal cases to the supreme court of Montana from Montana district courts and original proceedings in the supreme court of Montana. The party applying for original relief is known as the petitioner and the adverse party as the defendant. The party appealing is known as the appellant, and the adverse party as the respondent.

(b) In civil cases a party aggrieved may appeal from a judgment or order, except when expressly made final by law, in the following cases:

(1) From a final judgment entered in an action or special proceeding commenced in a district court, or brought into a district court from another court or administrative body.

(2) From an order granting a new trial; or refusing to permit an action to be maintained as a class action; or granting or dissolving an injunction; or refusing to grant or dissolve an injunction; or dissolving or refusing to dissolve an attachment; from an order changing or refusing to change the place of trial when the county designated in the complaint is not the proper county; from an order appointing or refusing to appoint a receiver, or giving directions with respect to a receivership, or refusing to vacate an order appointing or affecting a receiver; from an order directing the delivery, transfer, or surrender of property; from any special order made after final judgment; and from such interlocutory judgments or orders, in actions for partition as determine the rights and interests of the respective parties and direct partition to

be made. In any of the cases mentioned in this subdivision the supreme court, or a justice thereof, may stay all proceedings under the order appealed from, on such conditions as may seem proper.

(3) From a judgment or order granting or refusing to grant, revoking or refusing to revoke, letters testamentary, or of administration, or of guardianship; or admitting or refusing to admit a will to probate, or against or in favor of the validity of a will, or revoking or refusing to revoke the probate thereof; or against or in favor of setting apart property, or making an allowance for a widow or child; or against or in favor of directing the partition, sale, or conveyance of real property, or settling an account of an executor, or administrator, or guardian; or refusing, allowing, directing the distribution or partition of any estate, or any part thereof, or the payment of a debt, claim, legacy, or distributive share; or confirming or refusing to confirm a report of an appraiser setting apart a homestead.

(c) All questions raised on an order overruling a motion for a new trial or on an order changing or refusing to change the place of trial under [R.C.M. 1947, section 93-2906, subdivision 4 thereof or] subsection (2) or (3) of section 25-2-201, Montana Code Annotated, may be raised and reviewed on an appeal from the judgment.

(d) Appeals may be taken in criminal cases as provided in sections 46-20-103 and 46-20-104, Montana Code Annotated.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Cross-References

Venue, Title 25, ch. 2.

New trial, Title 25, ch. 11.

Receivers, Title 25, ch. 14, part 2.

Determination by order whether class action to be maintained, Rule 23(c), M.R.Civ.P. (see Title 25, ch. 20).

Order granting new trial, Rule 59(f), M.R.Civ.P. (see Title 25, ch. 20).

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Receivers, Rule 66, M.R.Civ.P. (see Title 25, ch. 20).

Rule 2. What the court may review on an appeal from a judgment.

(a) Upon appeal from a judgment in a civil case, the court may review the verdict or decision, and any intermediate order or decision excepted or objected to within the meaning of Rule 46 of the Montana Rules of Civil Procedure, which involves the merits, or necessarily affects the judgment, except a decision or order from which an appeal might have been taken.

(b) The scope of review in criminal cases is governed by sections 46-20-701 and 46-20-702, Montana Code Annotated.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Cross-References

Judgment to be on the merits, 25-9-101.

Rule 3. Suspension of the rules.

In the interest of expediting decision upon any matter before it, or for other good cause shown, the supreme court may, except as otherwise provided in Rule 21(b), suspend the requirements or provisions of these rules on application of a party or on its own motion and may order proceedings in accordance with its direction.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

II. Appeals From Judgments and Orders of District Courts

Rule 4. How taken.

(a) Filing the notice of appeal. An appeal shall be taken by filing a notice of appeal in the district court. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the supreme court deems appropriate, which may include dismissal of the appeal.

(b) Joint or consolidated appeals. If two or more persons are entitled to appeal from a judgment or order of a district court and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate timely notices of appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the supreme court upon its own motion or upon motion of a party, or by stipulation of the parties to the several appeals.

(c) Content of the notice of appeal. The notice of appeal shall specify the party or parties taking the appeal; and shall designate the judgment, order or part thereof appealed from. Form 1 in the Appendix of Forms is a suggested form of notice of appeal. An appeal shall not be dismissed for informality of form or title of the notice of appeal.

(d) Service of notice of appeal. The clerk of the district court shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record of each party other than the appellant, or, if a party is not represented by counsel, to the party at his last known address, and shall mail a copy of the notice of appeal to the clerk of the supreme court. The clerk of the district court shall note on each copy served the date on which the notice of appeal was filed. If an appellant is represented by counsel, his counsel shall provide the clerk with sufficient copies of the notice of appeal to permit the clerk to comply with the requirements of this rule. Failure of the clerk to serve notice shall not affect the validity of the appeal. The notice shall be sufficient notwithstanding the death of a party or his counsel. The clerk shall note in the docket the names of the parties to whom he mails copies, with the date of mailing.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Cross-References

Notice of appeal to be served on Attorney General, 25-1-502.

Substitution of parties in civil cases, Rule 37, M.R.App.P.

Cases involving constitutional questions where the state is not a party, Rule 38, M.R.App.P.

Death or removal of attorney, 37-61-405.

Rule 5. Time for filing notice of appeal.

(a) Appeals in civil cases.

(1) In civil cases the notice of appeal required by Rule 4 shall be filed with the clerk of the district court within 30 days from the date of the entry of the judgment or order appealed from, except that in cases where service of notice of entry of judgment is required by Rule 77(d) of the Montana Rules of Civil Procedure the time shall be 30 days from the service of notice of entry of judgment; but if the State of Montana, or any political subdivision thereof, or an officer or agency thereof is a party the notice of appeal shall

be filed within 60 days from the entry of the judgment or order or 60 days from the service of notice of the entry of judgment. If a notice of appeal is mistakenly filed in the supreme court, the clerk of the supreme court shall note thereon the date on which it was received and transmit it to the clerk of the district court and it shall be deemed filed in the district court on the date so noted.

(2) Except as provided in subsection (a)(4) of this Rule 5, a notice of appeal filed after the announcement of a decision or order but prior to the time that the appeal period begins to run under subsection (a)(1) of this Rule 5, i.e., before the entry of the order or judgment appealed from or the service of the notice of entry of judgment as the case may be, shall be treated as filed after such entry and on the day thereof.

(3) If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days after the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this Rule 5(a), whichever period last expires.

(4) If a timely motion under the Montana Rules of Civil Procedure is filed in the district court by any party: (i) for judgment under Rule 50(b); (ii) under Rule 52(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (iii) under Rule 59 to alter or amend the judgment; or (iv) under Rule 59 for a new trial , the time for appeal for all parties shall run from the entry of the order denying a new trial or granting or denying any other such motion, or if applicable, from the time such motion is deemed denied at the expiration of the 45-day period established by Rule 59(d), Montana Rules of Civil Procedure. A notice of appeal filed before the disposition of any of the above motions shall have no effect. A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the motion as provided above, or if applicable, from the date of the expiration of the 45-day period established in Rule 59(d), Montana Rules of Civil Procedure. No additional fees shall be required for such filing.

(5) The district court, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time prescribed by this Rule 5(a). Any such motion which is filed before expiration of the prescribed time may be ex parte unless the court otherwise requires. Notice of any such motion which is filed after expiration of the prescribed time shall be given to the other parties in accordance with local rules. No such extension shall exceed 30 days past such prescribed time or 10 days from the date of entry of the order granting the motion, whichever occurs later.

(b) Appeals in criminal cases.

In criminal cases an appeal from a judgment must be taken within 60 days. An appeal from an order or judgment made appealable by section 46-20-103, Montana Code Annotated must be taken within 14 days.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Rule 6. Undertaking for costs on appeal in civil cases.

(a) The district court may require an appellant to file a bond or provide other security in such form and amount as it finds necessary to insure payment of costs on appeal in a civil case. The provisions of Rule 8(a) apply to a surety upon a bond given pursuant to this rule.

(b) No undertaking for costs is required in appeals in criminal cases.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Cross-References

Costs in civil cases, Rule 33, M.R.App.P.

Undertakings for security, Title 25, ch. 1, part 4.

Rule 7. Stay of judgment or order pending appeal.

(a) [Stay upon entry of judgment—undertaking]. Upon entry of a judgment or order in a civil case a party may apply to the district court on notice or ex parte for a stay of the execution of the judgment or order. The court in its discretion may grant said stay for such period of time and under such conditions as the court deems proper, including restraining the party from disposing of, encumbering, or concealing his property. However, a district court's stay of execution, granted pursuant to this section, shall not be effective for more than 30 days following the district court's disposition of motions made pursuant to Rules 50(b), 52(b), 59 or 60(b) of the Montana Rules of Civil Procedure.

(b) Upon service of notice of appeal, if the appellant desires a stay of execution, he must, unless the requirement is waived by the opposing party, present to the district court and secure its approval of a supersedeas bond which shall have two sureties or a corporate surety as may be authorized by law. The bond shall be conditioned for the satisfaction of the judgment or order in full together with costs, interest, and damages for delay, if for any reason the appeal is dismissed or if the judgment or order is affirmed, and to satisfy in full such modification of the judgment or order and such costs, interest, and damages as the supreme court may adjudge and award. When the judgment or order is for the recovery of money not otherwise secured, the amount of the bond shall be fixed at such sum as will cover the whole amount of the judgment or order remaining unsatisfied, costs on the appeal, interest, and damages for delay, unless the district court after notice and hearing and for good cause shown fixes a different amount or orders security other than the bond. When the judgment or order determines the disposition of property in controversy as in real actions, replevin, and actions to foreclose mortgages, or when such property is in the custody of the sheriff or when the proceeds of such property or a bond for its value is in the custody or control of the court, the amount of the supersedeas bond shall be fixed at such sum only as will secure the amount recovered for the use and detention of the property, the costs of the action, costs on appeal, interest, and damages for delay. On application, the supreme court in the interest of justice may suspend, modify, restore, or grant any order made under this subdivision.

(c) [Sale of perishable property]. If the judgment or order appealed from directs the sale of perishable property, the district court may order the property to be sold and the proceeds thereof to be deposited, to abide the judgment of the supreme court.

(d) [Cases in which stay of proceedings not allowed]. No stay of proceedings shall be allowed upon a judgment or order which adjudges the defendant guilty of usurping, or intruding into, or unlawfully holding public office, civil or military, within this state; or which grants a writ of mandamus, or of prohibition, against a tribunal, corporation, public officer, or board, commanding

certain acts to be done which ought to be done by such tribunal, corporation, public officer, or board, and not involving the payment or allowance of money or its equivalent.

(e) Stays in criminal cases are governed by sections 46-20-204 and 46-20-205, Montana Code Annotated.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Cross-References

Deposits in court — delivery to party, Title 25, ch. 8.

Stay of proceedings to enforce judgment, Rule 62, M.R.Civ.P. (see Title 25, ch. 20).

Costs in civil cases, Rule 33, M.R.App.P.

Claim and delivery, Title 27, ch. 17.

Mandamus, Title 27, ch. 26.

Writ of Prohibition, Title 27, ch. 27.

Quo warranto, Title 27, ch. 28.

Rule 8. Sureties and their justification.

(a) [Liability of surety—enforcement]. In cases where an undertaking on appeal or supersedeas bond with sureties is required, the provisions of sections 25-1-402, 25-13-105, 33-26-101, 33-26-102, and 72-31-101, Montana Code Annotated, apply. By entering into an undertaking on appeal or supersedeas bond given pursuant to Rules 6 and 7, the surety submits himself to the jurisdiction of the district court and irrevocably appoints the clerk of the district court as his agent upon whom papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of any independent action. The motion and such notice of the motion as the district court prescribed may be served on the clerk of that court, who shall forthwith mail copies to each surety whose address is known.

(b) [Justification of sureties]. A party may except to the sufficiency of the sureties to any bond or undertaking mentioned in this rule at any time within 30 days after the filing of such bond or undertaking; and unless they or other sureties, within 20 days after service of notice of such exception, justify before a judge of the district court, or the clerk thereof, upon 5 days' notice to the other parties of the time and place of justification, execution of the judgment or order appealed from is no longer stayed.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Rule 9. The record on appeal.

(a) Composition of the record on appeal. The original papers and exhibits filed in the district court, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the district court shall constitute the record on appeal in all cases.

(b) The transcript of proceedings — duty of appellant to order — notice to respondent if partial transcript is ordered — costs of producing. Within 10 days after filing the notice of appeal the appellant shall order from the reporter a transcript of such parts of the proceedings not already on file as he deems necessary for inclusion in the record. In all cases where the appellant intends to urge insufficiency of the evidence to support the verdict, order or judgment in the district court, it shall be the duty of the appellant to order the entire transcript of the evidence. Wherever the sufficiency of the evidence to support a special verdict or answer by a jury to an interrogatory, or to support a specific finding of fact by the trial court, is to be raised on the appeal by the appellant, he shall be under a duty to include in the transcript all evidence relevant to such verdict, answer or finding. Unless the entire transcript

is to be included, the appellant shall, within the time above provided, file and serve on the respondent a description of the parts of the transcript which he intends to include in the record and a statement of the issues which he intends to present on the appeal. If the respondent deems a transcript of other parts of the proceedings to be necessary he shall within 10 days after such filing and service order such parts from the reporter or procure an order from the district court requiring the appellant to so do.

Except as provided in subsection (c) of this rule, the cost of producing the transcript shall be paid by the appellant, or he shall make satisfactory arrangements with the reporter for the payment of such cost; but, if the appellant considers that any part of the record designated by the respondent for inclusion is unnecessary for the determination of the issues presented, he shall advise the respondent, and the district court may impose upon the respondent the cost of producing any part which it deems unnecessary for the determination of the issues.

The reporter shall certify the correctness of the transcript.

(c) Transcript of proceedings in criminal cases—defendants without financial means—petition in supreme court.

(1) Upon imposition of any sentence in a criminal case, a defendant may file in the trial court a petition requesting that he be furnished with a transcript of the proceedings at his trial. The petition shall be verified by the petitioner and shall state facts showing that he is at the time of filing the petition without financial means to pay for the transcript. If the trial judge who imposed sentence or in his absence any judge of the court finds that the defendant is without financial means with which to obtain the transcript of the proceedings at his trial, he shall order the official court reporter to transcribe an original and copy of his notes of the proceedings at the trial. The original of the report of proceedings shall be filed with the clerk of the trial court, and the copy shall be delivered to the defendant without charge.

(2) If the petition provided for in subsection (1) is denied by the trial court, a petition so to proceed may be filed in the supreme court within 30 days after entry of the denial. The petition shall be accompanied by a copy of the verification filed in the trial court and a copy of the statement of reasons for denial given by the trial court.

(d) Statement of the evidence or proceedings when no report was made or when the transcript is unavailable. If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may, within 10 days from the hearing or trial or such time extended as the district court may for good cause shown permit, prepare a statement of the evidence or proceedings from the best available means, including his recollection. The statement shall be served on the respondent, who may serve objections or propose amendments thereto within 10 days after service. Thereupon, the statement and any objections or proposed amendments shall be submitted for settlement and approval to the district judge who handled the proceedings, and as settled and approved shall be included by the clerk of the district court in the record on appeal. A judge may settle and approve such record after he ceases to be a judge. If such judge before the statement is settled and approved dies, is removed from office, becomes disqualified, is absent from the state, or refuses to settle and approve the statement, it shall be settled and approved in such manner as the supreme court may direct.

(e) Agreed statement as the record on appeal. In lieu of the record on appeal as defined in subdivision (a) of this rule, the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the district court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, it, together with such additions as the court may consider necessary fully to present the issues raised by the appeal, shall be approved by the district court and shall then be certified to the supreme court as the record on appeal and transmitted thereto by the clerk of the district court within the time provided by Rule 10. Copies of the agreed statement may be filed as the appendix required by Rule 25.

(f) Correction or modification of the record. If any difference arises as to whether the record truly discloses what occurred in the district court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the district court, either before or after the record is transmitted to the supreme court, on proper suggestion or of its own initiative, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the supreme court.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-10, Oct. 22, 1971, eff. Jan. 1, 1972; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Cross-References

Docket of District Court, 3-5-508.

Copy of proceedings by court reporter, 3-5-604.

Rule 10. Transmission of the record.

(a) Time for transmission — number of copies of transcript — duty of appellant. The record on appeal, including the transcript necessary for the determination of the appeal, shall be transmitted to the supreme court within 40 days after the filing of the notice of appeal unless the time is shortened or extended by an order entered under subdivision (c) of this rule. Three copies of each transcript must be lodged with the clerk of this court for filing. Promptly after filing the notice of appeal the appellant shall comply with the provisions of Rule 9(b) and shall take any other action necessary to enable the clerk to assemble and transmit the record. If more than one appeal is filed, each appellant shall comply with the provisions of Rule 9(b) and this subdivision, and a single record shall be transmitted within 40 days after the filing of the final notice of appeal.

(b) Duty of clerk to transmit the record. When the record is complete for purposes of the appeal, the clerk of the district court shall transmit it to the clerk of the supreme court. The clerk shall number the documents comprising the record and shall transmit with the record a numbered list of the documents, identifying each with reasonable definiteness. Documents in bulky containers and physical exhibits other than documents shall not be transmitted by the clerk unless he is directed to do so by a party or by the clerk of the supreme court. A party must make advance arrangements with the clerk of the district court for the transportation of bulky or weighty exhibits and with the clerk of the supreme court for their receipt. Transmission of the record

is effected when the clerk of the district court mails or otherwise forwards the record to the supreme court. The clerk of the district court shall indicate, by endorsement on the face of the record or otherwise, the date upon which it is transmitted to the supreme court.

(c) Extension of time for transmission of the record — reduction of time. The district court may extend the time for transmitting the record. The request for extension must be made within the time originally prescribed or within an extension previously granted, and the district court shall not extend the time to a day more than 90 days from the date of filing of the first notice of appeal. If the district court is without authority to grant the relief sought or has denied a request therefor, the supreme court may on motion extend the time for transmitting the record or may permit the record to be transmitted and filed after the expiration of the time allowed or fixed. A motion for an extension of time for transmitting the record made in either court shall show that the inability of the appellant to cause timely transmission of the record is due to causes beyond his control or to circumstances which may be deemed excusable neglect. Such a motion shall be served upon all other parties to the appeal or review or upon their counsel if represented by such and also upon the district court judge who presided. The motion shall include whether or not previous extensions of time have been granted and if so, the total amount of time extended. If a request has previously been denied, the motion shall set forth the denial and state the reasons therefor, if any were given.

The district court or the supreme court may require the record to be transmitted and the appeal to be docketed at any time within the time otherwise fixed or allowed therefor.

(d) Retention of the record in the district court by order of court. The supreme court may provide by rule or order that a certified copy of the docket entries shall be transmitted in lieu of the entire record, subject to the right of any party to request at any time during the pendency of the appeal that designated parts of the record be transmitted.

If the record is required in the district court for use there pending the appeal, the district court may make an order to that effect, and the clerk of the district court shall retain the record and shall transmit a copy of the order and of the docket entries together with such parts of the original record as the district court shall allow and copies of such parts as the parties may designate.

If the record is retained in the district court by order of either court, the clerk of the district court shall retain it subject to the order of the supreme court, and transmission of the copy of the docket entries shall constitute transmission of the record.

(e) Stipulation of parties that parts of the record be retained in the district court. The parties may agree by written stipulation filed in the district court that designated parts of the record shall be retained in the district court unless thereafter the supreme court shall order or any party shall request their transmittal. The parts thus designated shall nevertheless be a part of the record on appeal for all purposes.

(f) Record for preliminary hearing in the supreme court. If prior to the time the record is transmitted a party desires to make in the supreme court a motion for dismissal, for a stay pending appeal, for additional security on

the undertaking on appeal or on a supersedeas bond, or for any intermediate order, the clerk of the district court at the request of any party shall transmit to the supreme court such parts of the original record as the party shall designate.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750, June 30, 1981; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Compiler's Comments

1981 Amendment — Reasons — Effective Date: Supreme Court Order 10750, June 30, 1981, provided in part:

"1. The Court received from the Advisory Committee to the Supreme Court of the State of Montana on Rules of Civil Procedure its Report and Proposal that Rule 10(a) of the Montana Rules of Appellate Civil Procedure be amended to provide that three copies of each transcript, instead of six copies, be filed with the clerk of this Court on appeals.

2. On December 9, 1980, in an order entered in our cause no. 10750 (1980), we directed that notice of said proposal be given as required by section 3-2-703, MCA, and further directed that within six months of the filing of the petition by the Advisory Committee members of the bar or bench might file suggestions regarding the proposal, or request hearing thereon within said six month period.

3. No request for hearing has been filed within the said time by any member of the bench or bar.

4. The association of Montana judges has adopted a resolution requesting (1) delay of one year in adopting the proposal for the purpose of a study; (2) requesting hearings outside the six month period provided by section 3-2-703, MCA, on the proposal, and (3) requesting the aid of this Court in procuring increased allowances for transcripts from the legislature.

5. The legislature, in Chapter 295, Laws of Montana (1981), increased the permissible folio charge allowed to court reporters from 7 ½ cents per folio to 10 cents per folio, effective October 1, 1981.

6. The reason given by the Advisory Committee in submitting the proposal are these:

"COMMENT: The amendment is made for the purpose of economizing as to the expense of appeals to the Montana Supreme Court, and also assisting the court in solving a filing space problem which confronts the court. The amendment recognizes that no one, including the court, the parties and the clerk of court, has any real need for more than three copies of the transcript on an appeal, nor will any such need exist when the court is expanded to seven Justices, commencing January 1, 1981."

7. The Court finds that the reasons given by the Advisory Committee for the proposal outweighs any need for delay in adopting the proposal, and that the matter of increased allowances for court reporters is a legislative matter outside the province of this Court unless such allowance became so unreasonable as to affect the business of this Court. . . .

9. Said amendment shall be effective as to all transcripts required to be filed in this Court, based on notices of appeal filed and served on or after July 1, 1981 or proceedings had or taken to this Court commencing on and continuing from July 1, 1981."

Cross-References

General duties of clerk, 3-5-501.

Rule 11. Docketing the appeal — filing of the record.

(a) Docketing the appeal. Within the time allowed or fixed for transmission of the record, the appellant shall pay to the clerk of the supreme court the fee for filing the record on appeal fixed by sections 3-2-403 and 3-2-404 of the Montana Code Annotated, and the clerk shall thereupon enter the appeal upon the docket. In criminal cases and other cases in which an appellant is authorized to prosecute the appeal without prepayment of fees, the clerk shall enter the appeal upon the docket at or before the time of filing the record. An appeal shall be docketed under the title given to the action in the district court with such addition as is necessary to indicate the identity of the appellant.

(b) Filing of the record. Upon receipt of the record by the clerk of the supreme court following its timely transmittal, and after the appeal has been timely docketed, the clerk shall file the record. The clerk shall immediately give notice to all parties of the date on which the record was filed.

(c) Dismissal for failure of appellant to cause timely transmission or to docket appeal. If the appellant shall fail to cause timely transmission of the

record or to pay the filing fee if a filing fee is required, any respondent may file a motion in the supreme court to dismiss the appeal. The motion shall be supported by a certificate of the clerk of the district court showing the date and substance of the judgment or order from which the appeal was taken, the date on which the notice of appeal was filed, and the expiration date of any order extending the time for transmitting the record; and by proof that 7 days' notice in writing has been served on the appellant that application will be made for dismissal of the appeal. The clerk shall docket the appeal for the purpose of permitting the court to entertain the motion, without requiring payment of the filing fee, but the appellant shall not be permitted to appear without payment of the fees unless he is otherwise exempt therefrom. Instead of filing a motion to dismiss the appeal, the respondent may cause the record to be transmitted and may docket the appeal, in which event the appeal shall proceed as if the appellant had caused it to be docketed.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Cross-References

Fees to be collected by Clerk of Supreme Court, 3-2-403.

Rule 12. Effect of dismissal.

The dismissal of an appeal is in effect an affirmance of the judgment or order appealed from, unless the dismissal is expressly made without prejudice to another appeal.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Cross-References

Motions for dismissal, Rule 22, M.R.App.P.

Consequences of failure to file brief, Rule 26(c), M.R.App.P.

Voluntary dismissal, Rule 36, M.R.App.P.

Rule 13. Acts of personal representatives or guardians valid when appointment vacated.

When the judgment or order appointing a personal representative or guardian is reversed on appeal, for error, and not for want of jurisdiction of the court, all lawful acts in administration upon the estate performed by such personal representative or guardian, if he has qualified, are as valid as if such judgment or order had been affirmed.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Cross-References

Qualifications of personal representative, Title 72, ch. 3, part 5.

Who may be a guardian — priorities, 72-5-312.

Rule 14. Ruling against respondent may be reviewed.

Whenever the record on appeal in a civil case shall contain any order, ruling, or proceeding of the trial court against the respondent, affecting his substantial rights on the appeal of said cause, together with any required objection or exception of such respondent, the supreme court on such appeal shall consider such orders, rulings, or proceedings, and the objections and exceptions thereto, and shall reverse or affirm the cause on said appeal according to the substantial rights of the respective parties, as shown upon

the record. And no civil cause shall be reversed upon appeal by reason of any error committed by the trial court against the appellant, where the record shows that the same result would have been attained had such trial court not committed an error or errors against the respondent.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Rule 15. Remedial powers of the supreme court in civil cases.

In a civil case when the judgment or order is reversed or modified, the supreme court may make complete restitution of all property and rights lost by the erroneous judgment or order, so far as such restitution is consistent with protection of a purchaser of property at a sale ordered by the judgment, or had under process issued upon the judgment, on an appeal from which the proceedings were not stayed; and for relief in such cases the appellant may have his action against the respondent, enforcing the judgment for the proceeds of the sale of the property, after deducting therefrom the expenses of the sale.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Cross-References

Sale on execution of judgment, Title 25, ch. 13, part 7.

Rule 16. Remittitur must be certified to the clerk of the district court.

When judgment is rendered upon the appeal, it must be certified by the clerk of the supreme court to the clerk of the district court from which the appeal is taken. The clerk of the district court must enter at length in the records of the court the certificate received. Also, in cases of appeal from a judgment, the clerk must enter a minute of the judgment of the supreme court on the docket against the original entry; and in cases of appeal from an order, he must enter a minute against the entry of the order appealed from, containing a reference to the certificate, with a brief statement that such order has been affirmed, reversed, or modified by the supreme court on appeal.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Cross-References

No petition for rehearing allowed when remittitur ordered, Rule 34, M.R.App.P.

Remittitur, when issued, Rule 35(b), M.R.App.P.

III. Original Proceedings — Extraordinary Writs

Rule 17. Acceptance and manner of conducting.

(a) When accepted. The supreme court is an appellate court but it is empowered by the constitution of Montana to hear and determine such original and remedial writs as may be necessary or proper to the complete exercise of its jurisdiction. The institution of such original proceedings in the supreme court is sometimes justified by circumstances of an emergency nature, as when a cause of action or a right has arisen under conditions making due consideration in the trial courts and due appeal to this court an

inadequate remedy, or when supervision of a trial court other than by appeal is deemed necessary or proper.

(b) How commenced and conducted. Proceedings commenced in the supreme court originally to obtain writs of habeas corpus, injunction, review, mandate, quo warranto, supervisory control, and other remedial writs or orders, shall be commenced and conducted in the manner prescribed by the applicable sections of the Montana Code Annotated for the conduct of such or analogous proceedings and by these additional rules. All papers filed shall conform to the requirements of Rule 27, except that typewritten applications, briefs, copies of exhibits and the like may be used without securing permission of the chief justice as required by Rule 27(a). The provisions of Rule 27(b) shall be observed.

(c) Applications — where and when filed. An original application may be made to the supreme court at any time. The moving party's application and all supporting documents shall be filed with the clerk of the supreme court.

(d) Applications — what to contain. The application for the issuance of the above writs or orders must set forth, in addition to the other requisite matters, the particular questions and issues anticipated or expected to be raised in the proceeding and also the fact which renders it necessary and proper that the writ should issue originally from the supreme court; the said matters will be taken into consideration by the court in determining the necessity and propriety of accepting jurisdiction and granting the alternative writ or order to show cause. Each application shall also set forth as exhibits, without repetition of title of court and cause, a copy of each judgment, order, notice, pleading, document proceeding or court minute referred to in the application, or which is necessary to make out a prima facie case or to substantiate the pleading or conclusion or legal effect. A memorandum or authorities must be filed with the application. Counsel shall file with the clerk of this court the original court file, unless for some reason the same is not available.

(e) Procedure. The supreme court shall consider an application for an extraordinary writ at the court's next court conference following the filing of the application. On the basis of the application filed, the court shall as promptly as possible, dismiss the petition, accept jurisdiction, or order a response reserving the question of jurisdiction. Only in extraordinary cases will the court grant oral argument to determine the necessity and propriety of accepting jurisdiction.

Unless oral argument is ordered by this court in order to establish jurisdiction, the court will enter an appropriate order forthwith. Such order may dismiss the petition, grant the relief requested, order a hearing on the application, or issue any other writ or order deemed appropriate in the circumstances.

(f) Oral argument. When ordered by this court, an adversary hearing on the application shall be held at the time fixed by the order. The oral argument shall be conducted in the same manner as in the argument of appeals, with the same time limits for presentation, and with the applicant opening and closing the argument.

(g) Briefs. In those cases in which oral argument is ordered, each party shall serve and file briefs in full conformance with Rules 20, 23, and 27, and

containing a statement of the facts and of the points of law applicable, with the authorities relied upon.

All briefs shall be served and filed according to the time schedule set forth in the order, and in no event later than 24 hours prior to the time fixed for oral argument.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-10, Oct. 22, 1971, eff. Jan. 1, 1972; amd. Sup. Ct. Ord., eff. Jan. 1, 1981.

Cross-References

Supreme Court jurisdiction, Art. VII, sec. 2, Mont. Const.

Types of jurisdiction, 3-2-201.

Original jurisdiction, 3-2-202.

Injunctions, 3-2-205; Title 27, ch. 19.

Certiorari — Writ of Review, 3-2-212; Title 27, ch. 25.

Habeas corpus, 3-2-212; Title 46, ch. 22.

Mandamus — Writ of Mandate, Title 27, ch. 26.

Writ of Prohibition, Title 27, ch. 27.

Quo warranto, Title 27, ch. 28.

IV. Appeals in Forma Pauperis

Rule 18. Applications and manner of proceeding.

(a) Application to district court. A party in a civil case who desires to proceed on appeal in forma pauperis shall file in the district court a motion for leave so to proceed together with an affidavit showing, in the detail prescribed by Form 2 of the Appendix of Forms, his inability to pay the fees and costs of the appeal or to give security therefor, his belief that he is entitled to redress, and a statement of the issues he intends to present on appeal. If the motion is granted, the party may proceed on appeal without further application to the supreme court and without payment of fees or costs or the giving of security therefor. If the motion is denied, the district court shall state the reasons for the denial.

(b) Application to the supreme court. If the motion for leave to proceed on appeal in forma pauperis is denied by the district court, a motion for leave so to proceed may be filed in the supreme court within 30 days after entry of the order of denial. The motion shall be accompanied by a copy of the affidavit filed in the district court and of the statement of reasons for denial given by the district court.

(c) Form of briefs, appendices and other papers. Parties allowed to proceed in forma pauperis may file briefs, appendices and other papers in typewritten form.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Cross-References

Poor persons not required to prepay fees in District Court, 25-10-404.

Form of briefs, Rule 27, M.R.App.P.

V. General Provisions

Rule 19. Record of commissions and oaths.

(a) Commissions and oaths. The commissions and oaths of the justices and the clerk of this court, and the attorney general shall be recorded in the records of this court.

(b) Minutes of court. The minutes of this court shall be approved by the chief justice (or in his absence by the associate justice having the shortest term to serve), and attested by the clerk.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Cross-References

Oaths — form — before whom — when, 2-16-211.

Filing, 2-16-212.

Rule 20. Filing and service.

(a) Filing. Papers required or permitted to be filed must be placed in the custody of the clerk within the time fixed for filing. Filing may be accomplished by mail addressed to the clerk, but filing shall not be timely unless the papers are actually received within the time fixed for filing. If a motion requests relief which may be granted by a single judge, the judge may permit the motion to be filed with him, in which event he shall note thereon the dates of filing and shall thereafter transmit it to the clerk.

(b) Service of all papers required. Copies of all papers, including any transcript, filed by any party and not required by these rules to be served by the clerk shall, at or before the time of filing, be served by the party or person acting for him on all other parties to the appeal or review. Service on a party represented by counsel shall be made on counsel. In criminal cases appealed by the defendant all transcripts, briefs, motions, and other papers shall be served on both the county attorney and the attorney general.

(c) Manner of service. Service may be personal or by mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing.

(d) Proof of service. Papers presented for filing shall contain acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed. The clerk may permit papers to be filed without acknowledgment of proof of service but shall require such to be filed promptly thereafter.

(e) Number of copies to be filed. An original and seven copies of all motions (other than procedural motions), petitions for extraordinary writs or other original proceedings, petitions for rehearing, and the answers or responses thereto, shall be filed with the clerk of the supreme court unless otherwise ordered by the court. The original only of procedural motions shall be filed. The number of copies of transcripts shall be in accordance with Rule 10(a) and the number of copies of briefs shall be in accordance with Rule 26(b).

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Cross-References

Duties of Clerk of Supreme Court, 3-2-402.

Fees, 3-2-403.

Duties of Marshal, 3-2-502.

Rule 21. Computation and extension of time.

(a) Computation of time. In computing any period of time prescribed by these rules, by an order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run

shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday or a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

(b) Extension of time. The court for good cause shown may upon motion extend the time prescribed by these rules or by its order for doing any act, and may thereby permit an act to be done after the expiration of such time if the failure to act was excusable under the circumstances; except the court in a civil case may not extend the time for filing a notice of appeal, except as provided in Rule 5. Within the text of each motion requesting an extension of time submitted to the court for its consideration, counsel shall note that opposing counsel has been contacted concerning the motion and whether opposing counsel objects to the motion. All motions and orders for extension of time shall include a date certain on or before which date the act for which an extension of time is requested must be performed.

(c) Additional time after service by mail. Whenever a party is required or permitted to do any act within a prescribed period after service of a paper upon him and the paper is served by mail, 3 days shall be added to the prescribed period.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Cross-References

Rules concerning time, Title 1, ch. 1, part 3.

Time, Rule 6, M.R.Civ.P. (see Title 25, ch. 20).

Rule 22. Motions.

Unless another form is prescribed by these rules, an application for an order or other relief shall be made by filing a motion in writing for such order or relief. The motion shall state with particularity the grounds therefor and shall set forth the order or relief sought. Counsel shall also note therein that opposing counsel has been contacted concerning the motion and whether opposing counsel objects to the motion. If a motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. The supreme court may authorize disposition of motions for procedural orders by a single judge. If a motion seeks dismissal of the appeal or other substantial relief, any party may file an answer in opposition within 7 days after service of the motion, or within such time as the court may direct. Motions, supporting papers and any response thereto may be typewritten.

At the time of filing a procedural motion counsel shall present a proposed order, together with sufficient copies for service upon all counsel of record, as well as stamped envelopes addressed to all counsel of record.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Rule 23. Briefs.

(a) Brief of the appellant. The brief of the appellant shall contain under appropriate headings and in the order here indicated:

(1) A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with references to the pages of the brief where they are cited.

(2) A statement of the issues presented for review.

(3) A statement of the case. The statement shall first indicate briefly the nature of the case and its disposition in the court below, e.g.: "The plaintiff brought this action in the district court to recover damages for the wrongful death of her husband. The jury returned a verdict for the plaintiff. On motion of the defendant the trial judge entered judgment for the defendant n. o. v. on the ground that there was no evidence to support a finding of negligence on the part of the defendant. From this judgment the plaintiff appeals."

There shall follow a statement of the facts relevant to the issues presented for review, with references to the pages of the parts of the record at which material facts appear (see subdivision (e)).

(4) An argument. The argument may be preceded by a summary. The argument shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and pages of the record relied on.

(5) A short conclusion stating the precise relief sought.

(6) The judgment, order, findings of fact, conclusions of law, or decision in question, together with the memorandum opinion, if any, in support thereof. If an appendix is filed pursuant to Rule 25, the foregoing may be included therein.

(b) Brief of the respondent. The brief of the respondent shall conform to the requirements of subdivision (a) (1) to (4), except that a statement of the issues or of the case need not be made unless the respondent is dissatisfied with the statement of the appellant.

(c) Reply brief. The appellant may file a brief in reply to the brief of the respondent. The reply brief must be confined to new matter raised in the brief of the respondent. No further briefs may be filed except with leave of court.

(d) References in briefs to parties. Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such formal designations as "appellant" and "respondent." It promotes clarity to use names or descriptive terms such as "the employee," "the injured person," "the taxpayer," etc.

(e) References in briefs to the record. Whenever a reference is made in the briefs to the record, the reference must be to particular parts of the record, suitably designated, and to specific pages of each part, e. g., Answer, p. 7; Motion for Summary Judgment, p. 3; Transcript, p. 231. Intelligible abbreviations may be used. If reference is made to an exhibit, reference shall be made to the pages of the transcript on which the exhibit was identified, offered, and received or rejected.

(f) Reproduction of statutes, rules, regulations, etc. If determination of the issues presented requires the study of statutes, rules, regulations, etc., or relevant parts thereof, they may be reproduced in the brief or in an addendum at the end, or they may be supplied to the court in pamphlet form. No such reproduction is required, unless ordered by the supreme court. When the error alleged is to the charge of the court, the brief of the parties shall set out with appropriate transcript references the part referred to totidem verbis, whether it be directed to instructions given or instructions refused.

(g) Length of briefs and costs. Except by permission of the court briefs shall not exceed 50 pages exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations,

etc. For purposes of assessing costs in civil cases under section 25-10-104, Montana Code Annotated, reasonable costs shall be limited as follows: For appellant's brief 50 pages; for respondent's brief 40 pages; for reply brief 15 pages. In addition, reasonable costs for briefs shall be limited to $250 for appellant's brief and $200 for respondent's brief.

(h) Briefs in cases involving cross appeals. If a cross appeal is filed, the plaintiff in the court below shall be deemed the appellant for the purposes of this rule and Rules 25 and 26, unless the parties otherwise agree or the court otherwise orders. The brief of the respondent shall contain the issues and argument involved in his appeal as well as the answer to the brief of the appellant.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-10, Oct. 22, 1971, eff. Jan. 1, 1972; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Cross-References

How costs on appeal claimed, 25-10-503.

Rule 24. Brief of an amicus curiae.

A brief of an amicus curiae may be filed only if accompanied by written consent of all parties, or by leave of court granted on motion. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. A motion of an amicus curiae for leave to participate in the oral argument will be granted only for extraordinary reasons.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Rule 25. The appendix to the briefs.

(a) Use of an appendix. At the time before final decision, the supreme court may order an appendix to any brief. Also, either the appellant or respondent may, if he deems it desirable, prepare, file and serve with his brief an appendix.

(b) Contents of the appendix. Unless otherwise ordered by the supreme court, an appendix shall contain: (1) the relevant docket entries in the proceeding below; (2) any relevant pleading and relevant given or refused jury instruction, finding and opinion; (3) the judgment, order, findings of fact, conclusions of law, or decision in question, together with the memorandum opinion, if any, in support thereof; and (4) such other parts of the record as any party deems it essential for the judges of the court to read in order to decide the issues presented. In designating parts of the record for inclusion in the appendix, the parties shall have regard for the fact that the entire record is always available to the court for reference or examination and shall not engage in unnecessary designation.

(c) Arrangement of the appendix. At the beginning of the appendix there shall appear a chronological list of the parts of the record which it contains. Each part of the record shall be listed by the descriptive title given to that part by the reference made to it in the briefs. The page or pages of the appendix at which each part of the record thus listed appears shall be set out opposite each listing in a column at the right, so as to permit immediate location in the appendix of the parts of the record referred to in the briefs and contained in the appendix.

The relevant docket entries in the proceeding below shall follow the list of contents. Thereafter, the parts of the record shall be set out in chronological

order. The original paging of each part of the record set out in the appendix shall be indicated by placing in brackets the number of the original page at the place where that page begins. Omissions in the text of papers or of testimony must be indicated by asterisks. A question and its answer may be contained in a single paragraph.

(d) Reproduction of exhibits. Exhibits may be contained in a separate volume, suitably indexed.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Cross-References

Docket, 3-5-508.

Rule 26. Filing and service of briefs.

(a) Time for filing briefs. The appellant shall serve and file his brief within 30 days after the date on which the record is filed. The respondent shall serve and file his brief within 30 days after service of the brief of the appellant. The appellant may serve and file a reply brief within 14 days after service of the brief of the respondent, but, except for good cause shown, a reply brief must be served and filed at least 3 days before argument.

(b) Number of copies to be filed and served. Ten copies of each brief shall be filed with the clerk of the supreme court unless otherwise ordered by the court, and one copy of each brief shall be served on counsel for each party separately represented. The clerk will not accept a brief for filing unless it is accompanied by acknowledgment or proof of service as required by Rule 20.

(c) Consequences of failure to file briefs. If an appellant fails to file his brief within the time provided by this rule, or within the time extended, a respondent may move for dismissal of the appeal. If a respondent fails to file his brief, he will not be heard at oral argument except by permission of the court.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Cross-References

Computation and extension of time, Rule 21, M.R.App.P.

Motions, Rule 22, M.R.App.P.

Rule 27. Form of briefs and other papers — duplication.

(a) Form of briefs, appendices, petitions, motions and other papers. Briefs, appendices, petitions, motions and other papers shall be produced by any standard printing process, by typewriter or by an equivalent process capable of producing a clear black image on white paper. All print must appear in at least 11 point type on opaque, unglazed paper. All of the foregoing papers shall have pages not exceeding 8 ½ by 11 inches with margins on the right side and on the top and bottom not less than 1 inch wide and on the left side not less than 1 ½ inches wide, provided, however, that papers from the proceeding below (pleadings, findings of fact and conclusions of law, judgments, exhibits and other like papers) may be (1) reproduced in their original form, size and print even though the papers exceed the foregoing size limitations, or (2) reproduced in their original form, but in a reduced size and print on pages not exceeding 8 ½ by 11 inches even though the print thereon is less than 11 point type, provided that the print is legible. Papers produced by typewriter or an equivalent process shall be double spaced except

that footnotes and quoted and indented material may be single spaced. Pages shall be bound or attached on the left margin and numbered. Petitions, motions and other like papers filed with the clerk of the supreme court shall contain numbered lines.

(b) Duplication. All requirements of duplication may be satisfied by the use of any photocopy method capable of producing a clear black image on white paper, but not including ordinary carbon copy, provided, that in each instance the duplication shall conform to the requirements of subdivision (a) of this rule as to paper, size, form and pagination. All papers and attachments thereto must be legible.

(c) First page and cover. The cover of the brief of the appellant shall be blue; that of the respondent, red; that of an intervenor or amicus curiae, green; that of any reply brief, gray. The cover of the appendix, if separately printed, shall be white. Where a transparent cover is utilized, the underlying sheet must nevertheless conform to these color requirements. On the first page and cover of all papers must be stated the title of this court, the title of the case as in the court below, adding to the words "Plaintiff" and "Defendant," the words "Appellant" and "Respondent" as the case may require, the names of counsel for appellant and respondent, the title of the papers, as "Appellant's Brief," "Appendix to Appellant's Brief," etc., and the venue from which the appeal is taken.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Cross-References

Appeals in forma pauperis — application and manner of proceeding, Rule 18, M.R.App.P.

Rule 28. Prehearing conference.

The court may direct the attorneys for the parties to appear before the court or a judge thereof for a prehearing conference to consider the simplification of the issues and such other matters as may aid in the disposition of the proceedings by the court. The court or judge shall make an order which recites the action taken at the conference and the agreements made by the parties as to any of the matters considered and which limits the issue to those not disposed of by admission or agreements of counsel, and such order when entered controls the subsequent course of the proceedings, unless modified to prevent manifest injustice.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Rule 29. Oral argument.

(a) Notice of hearing — postponement. The clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the hearing must be made by motion filed reasonably in advance of the date fixed for hearing.

(b) Time allowed for argument. Upon oral argument of an appeal or original proceeding, 40 minutes will be allowed appellant or applicant and 30 minutes to respondent. If counsel is of the opinion that additional time is necessary for the adequate presentation of his argument, he may request such additional time as he deems necessary by motion filed reasonably in advance of the date fixed for hearing. A party is not obliged to use all of the time

allowed, and the court may terminate the argument whenever in its judgment further argument is unnecessary.

(c) Order and content of argument. The appellant or applicant is entitled to open and conclude the argument. The opening argument shall include a fair statement of the case, and the closing argument shall be limited to rebuttal of respondent's argument. Counsel will not be permitted to read at length from briefs, records or authorities.

(d) Cross and separate appeals. A cross or separate appeal shall be argued with the initial appeal at a single hearing, unless the court otherwise directs. If a case involves a cross appeal, the plaintiff in the action below shall be deemed the appellant for the purpose of this rule unless the parties otherwise agree or the court otherwise directs. If separate appellants support the same argument, care shall be taken to avoid duplication of argument at the hearing.

(e) Nonappearance of counsel — failure to file briefs. If counsel for a party fails to appear to present argument, the court may hear argument on behalf of a party whose counsel is present, and the case will be decided on the briefs and the argument heard. If no counsel appear for any party, the case will be decided on the briefs unless the court shall otherwise order.

(f) Submission on briefs. By agreement of the parties, a case may be submitted for decision on the briefs, but the court may direct that the case be argued.

(g) Use of physical exhibits at hearing — removal. If physical exhibits other than documents are to be used at the hearing, counsel shall arrange to have them placed in the courtroom before the court convenes on the date of the hearing. After the hearing counsel shall cause the exhibits to be removed from the courtroom unless the court otherwise directs. If exhibits are not reclaimed by counsel within a reasonable time after notice is given by the clerk, they shall be destroyed or otherwise disposed of as the clerk shall think best.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Cross-References

No argument on appeals from injunction orders, Rule 40, M.R.App.P.

Rule 30. Entry and notice of orders.

The notation of an order in the docket constitutes entry thereof. Upon entry of an order, the clerk shall promptly mail to all parties a copy of the order, and notice of the date of entry thereof.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Rule 31. Interest on judgments.

If a judgment for money in a civil case is affirmed, whatever interest is allowed by law shall be payable from the date the judgment was rendered or made in the district court. If a judgment is modified or reversed with a direction that a judgment for money be entered in the district court, the mandate shall contain instructions with respect to allowance of interest.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Cross-References

Clerk to include interest in judgment, 25-9-204.

Amount of interest, 25-9-205.

Interest on torts, 27-1-210.

Rule 32. Damages for appeal without merit.

If the supreme court is satisfied from the record and the presentation of the appeal in a civil case that the same was taken without substantial or reasonable grounds, such damages may be assessed on determination thereof as under the circumstances are deemed proper.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Rule 33. Costs in civil cases.

(a) Costs on appeal. Costs on appeal in civil cases will be taxed as provided by section 25-10-104, Montana Code Annotated, and if not otherwise provided by the court in its decision, will automatically be awarded to the successful party against the other party. All costs on appeal shall be claimed as provided by section 25-10-503, Montana Code Annotated.

(b) Costs of briefs and appendices. The cost of printing or otherwise producing briefs and appendices shall be taxable at rates not higher than specified in Rule 23(g).

(c) Other costs taxable. Costs incurred in the preparation and transmission of the record, the cost of the reporter's transcript, if necessary for the determination of the appeal, the premiums paid for cost of supersedeas bonds or other bonds to preserve rights pending appeal, and the fee for filing notice of appeal shall be taxed in the district court as costs of the appeal in favor of the party entitled to costs under this rule.

(d) Costs in original proceedings. Costs in original proceedings, including reviews other than by appeal, will be taxed as provided by Montana Code Annotated, sections 25-10-101, 25-10-102, 25-10-103, and 25-10-105, and if not otherwise provided by the court in its decision, will be awarded to the successful party against the other party; provided, however, that costs awarded to plaintiff or relator in special proceedings to review inferior court rulings, orders or judgments will ordinarily be assessed against the real party in interest, namely, the party interested in upholding the inferior court's action, rather than against the state, county, municipality, subdivision, judge or justice.

(e) Unnecessary costs. Whenever it appears that the successful party has caused any redundant, useless or unnecessary matter to be incorporated in the record, briefs, or appendices, whether on appeal or in a special proceeding, he shall not recover as part of his costs so much of the expense as is occasioned thereby.

(f) Notation by clerk. The clerk of the supreme court shall, in all civil cases, include in the order of judgment of affirmance, reversal or modification on appeal, or for the issuance of a peremptory writ in an original proceeding, and in the remittitur, peremptory writ or judgment, a clause awarding the costs in accordance with this rule or the special order of this court, to be recovered after claim and ascertainment or taxation thereof in the manner prescribed by law; and the clerk shall also furnish therewith an itemized statement of such costs as have been paid by him.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-8, Sept. 10, 1968, eff. Jan. 1, 1969; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Cross-References

When costs allowed, of course, to plaintiff, 25-10-101.

When costs allowed, of course, to defendant, 25-10-102.

Rule 34. Petitions for rehearing.

When, in appeals or special proceedings, it is ordered that remittitur, peremptory writ or judgment issue forthwith, no petition for rehearing will be entertained. In all other cases a petition for rehearing may be filed within 10 days after the decision of the supreme court has been rendered, unless the time is shortened or enlarged by order, and the adverse party shall have 7 days thereafter in which to serve and file his objections thereto. Extensions of time will be granted only upon showing of unusual merit, and in no event in excess of 10 days. A petition for rehearing may be presented upon the following grounds and none other: That some fact, material to the decision, or some question decisive of the case submitted by counsel, was overlooked by the court, or that the decision is in conflict with an express statute or controlling decision to which the attention of the court was not directed. Oral argument in support of the petition will not be permitted. Six copies of the petition and six copies of objections thereto, which may be in typewritten form, shall be filed with the clerk.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Cross-References

Remittitur must be certified to the Clerk of District Court, Rule 16, M.R.App.P.

Rule 35. Notice and copy of decision — remittitur — mandate from United States supreme court.

(a) Notice and copy of decision to be furnished. Upon the decision of a cause, notice thereof, together with a copy of the court's written decision, will immediately be mailed to counsel for each party.

(b) Remittitur — when issued — when copy of opinion to accompany. Remittitur may, in cases where it is deemed proper, be ordered forthwith; otherwise the same shall be issued promptly upon expiration of time for filing petition for rehearing, or, if such petition is filed, then upon the denial thereof, unless a modification of the decision is made which permits a further petition for rehearing. A copy of the opinion must accompany the remittitur when the judgment or order of the trial court is reversed or modified and the case remanded for further proceedings other than the entry of a final judgment or order terminating the proceedings in the trial court.

(c) Mandate from United States supreme court — procedure thereon. Upon receipt by the clerk of the supreme court of Montana of a mandate from the supreme court of the United States in any case at law or in equity theretofore taken from the supreme court of Montana to the supreme court of the United States, it shall be the duty of said clerk forthwith to issue under his hand and the seal of the supreme court of Montana a remittitur to the district court by which the judgment was rendered, commanding such court to take such action in the premises as by the mandate shall be proper, and said remittitur shall also contain therein a recital in haec verba of the said mandate. In civil cases all the costs subsequent to the appeal from said district court shall be taxed in such remittitur.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Cross-References

Remittitur must be certified to the Clerk of District Court, Rule 16, M.R.App.P.

Rule 36. Voluntary dismissal.

If the parties to an appeal or other proceeding shall sign and file with the clerk an agreement that the proceeding be dismissed, specifying the terms as to payment of costs, and shall pay whatever fees are due, the clerk shall enter the case dismissed, and shall give to each party a copy of the agreement filed; but no mandate or other process shall issue without an order of the court. An appeal may be dismissed on motion of the appellant upon such terms as to costs as may be agreed upon by the parties or fixed by the court. If an appeal has not been docketed the appeal may be dismissed by the court from which the appeal was taken upon the filing in that court of a stipulation for dismissal signed by all parties, or upon motion and notice by the appellant. The clerk of the district court shall mail a copy of the order of dismissal to the clerk of the supreme court.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Cross-References

Effect of dismissal, Rule 12, M.R.App.P.
Motions for dismissal, Rule 22, M.R.App.P.
Consequences of failure to file brief, Rule 26(c), M.R.App.P.

Rule 37. Substitution of parties in civil cases.

(a) Death of a party. If a party dies after a notice of appeal is filed or while a proceeding is otherwise pending in the supreme court in a civil case, the personal representative of the deceased party may be substituted as a party on motion filed by the representative or by any party with the clerk of the supreme court. The motion of a party shall be served upon the representative in accordance with the provisions of Rule 20. If the deceased party has no representative, any party may suggest the death on the record and proceedings shall then be had as the supreme court may direct. If a party against whom an appeal may be taken dies after entry of a judgment or order in the district court but before a notice of appeal is filed, an appellant may proceed as if death had not occurred. After the notice of appeal is filed substitution shall be effected in the supreme court in accordance with this subdivision. If a party entitled to appeal shall die before filing a notice of appeal, the notice of appeal may be filed by his personal representative, or, if he has no personal representative, by his attorney of record within the time prescribed by these rules. After the notice of appeal is filed substitution shall be effected in the supreme court in accordance with this subdivision.

(b) Substitution for other causes. If substitution of a party in the supreme court is necessary for any reason other than death, substitution shall be effected in accordance with the procedure prescribed in subdivision (a).

(c) Public officers — death or separation from office.

(1) When a public officer is a party to an appeal or other proceeding in the supreme court in his official capacity and during its pendency dies, resigns or otherwise ceases to hold office, the action does not abate and his successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) When a public officer is a party to an appeal or other proceeding he may be described as a party by his official title rather than by name; but the court may require his name to be added.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Cross-References

Vacancy and succession, Title 2, ch. 16, part 5.

Substitution of parties, Rule 25, M.R.Civ.P. (see Title 25, ch. 20).

Right to bring action and assert defense, Title 27, ch. 1, part 5.

When a party dies before action commenced, 27-2-404.

Rule 38. Cases involving constitutional questions where the state is not a party.

It shall be the duty of counsel who challenges the constitutionality of any act of the Montana legislature in any suit or proceeding in the supreme court to which the state of Montana, or any agency thereof, or any officer or employee thereof, as such officer or employee, is not a party, upon the filing of the record to give immediate notice in writing to the court of the existence of said question, specifying the section of the code or the chapter of the session law to be construed. The clerk shall thereupon certify such fact to the attorney general of the state of Montana.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Cross-References

Service of process on state, 2-9-313.

Duties of Attorney General, 2-15-201, 2-15-501.

Notice to Attorney General, Title 25, ch. 1, part 5.

Service required upon Attorney General, Rule 4D(2)(h), M.R.Civ.P. (see Title 25, ch. 20).

Attorney General to be notified of constitutional questions, Rule 24(c), M.R.Civ.P. (see Title 25, ch. 20).

Necessary parties, 27-8-301.

Rule 39. Calendar — withdrawal of records.

(a) Placing causes upon calendar. All causes shall be classified as provided in the Montana Supreme Court 1982 Internal Operating Rules as the same may be amended by the court.

(b) Setting causes for argument. Causes on the calendar upon which oral argument is allowed will be set for argument by the court in the chronological order in which they have been placed on the calendar, except for such causes as are determined entitled to precedence or as otherwise ordered by the court. Oral arguments will not be heard during the months of July and August.

(c) Advancement of causes. In calendaring appeals of civil cases from orders dissolving, refusing to dissolve, granting or refusing to grant writs of injunction, appeals from orders dissolving or refusing to dissolve attachments, appeals from orders appointing or refusing to appoint receivers, appeals from orders or judgments holding appellant in custody, and workmen's compensation appeals, are entitled to precedence and will, upon motion of either party, be advanced on the calendar. In calendaring appeals of criminal cases, causes against defendants held in custody will be set for argument by the court in advance of causes against defendants on bail unless for good cause the court otherwise orders.

(d) Permission to take record from clerk's office. The records and other papers of the supreme court shall not be taken therefrom except by counsel pursuant to a written order of a justice of the court, which order shall specify the time the same may be retained out of the clerk's office; provided, that the

court or a justice thereof may require the same to be returned within a shorter period upon notice. The clerk shall preserve each order and counsel's receipt until the papers therein mentioned shall be returned.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Cross-References

Receivers, Rule 66, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 20.

Arrest and bail in civil actions, Title 27, ch. 16.

Prejudgment attachment, Title 27, ch. 18.

Injunctions, Title 27, ch. 19.

Workers' compensation, Title 39, ch. 71.

Rule 40. Appeals from injunction orders.

Upon appeal from an order dissolving or refusing an injunction, if the appellant desires to continue in force the injunction order dissolved by the district court, or to obtain such injunction order pending the appeal, he shall apply to the district court under Rule 62 of the Montana Rules of Civil Procedure. In the event the relief there requested be not granted he may file in the supreme court his sworn application, setting forth the proceedings appealed from and the relief desired, and present with it to the supreme court, a verified copy of the affidavits or evidence used on the hearing in the district court. Such application will be heard ex parte and without argument, and the court, upon such record will make such order in the premises as may be proper.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Cross-References

Injunctions, 3-2-205; Title 27, ch. 19.

Rule 41. Renumbered Rule 51. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Rule 42. Renumbered Rule 52. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Rule 43. Renumbered Rule 53. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Rule 44. Certification of questions of law.

(a) Power to answer. Whenever in an action pending in a United States court it shall appear that there is a controlling question of Montana law as to which there is a substantial ground for difference of opinion, a judge of the United States court wherein the action is pending may certify that the question upon which adjudication is sought is controlling in the federal litigation and the adjudication by the supreme court of Montana will materially advance ultimate termination of the federal litigation. Rendition of an answer by the supreme court of Montana to any such question of law certified to it is discretionary with the supreme court of Montana, and it may refuse to render an answer if it appears that there is another ground for determination of the case pending in the United States court, or if the question for adjudication is not clearly defined, or if the question is not adequately briefed or argued.

(b) Method of invoking. This rule may be invoked by a certification order of a United States court filed with the supreme court of Montana.

(c) Contents of certification order. A certification order shall set forth

(1) the questions of law to be answered; and

(2) a statement of all facts relevant to the questions certified and showing fully the nature of the controversy in which the questions arose.

(d) Preparation of certification order. The certification order shall be prepared by the certifying court, signed by the judge presiding at the hearing, and forwarded to the supreme court by the clerk of the certifying court under its official seal. The supreme court may require the original or copies of all or of any portion of the record before the certifying court to be filed with the certification order, if, in the opinion of the supreme court, the record or portion thereof may be necessary in answering the questions.

(e) Costs of certification. Fees and costs shall be the same as in civil appeals docketed before the supreme court and shall be equally divided between the parties unless otherwise ordered by the certifying court in its order of certification.

(f) If any party to the action believes that the supreme court should refuse to answer the certification order, such party may file a motion to such effect within ten days after such party receives notice that the certification order has been filed with the supreme court. Thereafter Rule 22 will govern further procedure as to such motion.

(g) Briefs and arguments. Proceedings in the supreme court shall be those provided in the foregoing rules governing briefs and arguments.

(h) Opinion. The written opinion of the supreme court stating the law governing the questions certified shall be sent by the clerk under the seal of the supreme court to the certifying court and to the parties.

History: En. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Rules 45 through 50 reserved.

Rule 51. Statutes and rules amended.

[This rule amended Rule 72 of the Montana Rules of Civil Procedure, and Montana Code Annotated, sections 25-9-301, 25-12-101, 25-12-102, 25-33-101, 25-33-205(2), 25-33-206, and 70-30-312. For text of amendments see the designated sections.]

History: Redes. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Rule 52. Applicability in general.

(a) Special statutory proceedings. The statutory proceedings listed in Table A of the Montana Rules of Civil Procedure and any other special statutory proceedings, whether or not listed in said Table A, are excepted from these rules insofar as they are inconsistent or in conflict with the procedure and practice provided by these rules.

(b) Appeals to district courts. These rules do not supersede the provisions of statutes relating to appeals to or review by the district courts, which shall govern procedure and practice relating thereto insofar as they are not inconsistent with these rules.

(c) Rules incorporated into statutes. Where any statute heretofore or hereafter enacted, whether or not applicable to a special statutory proceeding or listed in any table appended hereto, provides that any act in a proceeding in a district court or in the Montana supreme court shall be done in the manner provided by law or as in an action or as provided by any statute superseded by these rules, such act shall be done in accordance with these rules and the procedure thereon shall conform to these rules, insofar as practicable.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. and redes. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Compiler's Comments

Table A: The Code Commissioner has not reprinted Table A in the MCA because it was never intended to be a complete listing, has not been updated since 1963, contains a high percentage of repealed sections, and is generally obsolete and not very useful. Interested persons may find it in the 1964 main volume of R.C.M. 1947, Vol. 7.

Rule 53. Title — effective date — statutes superseded.

(a) Title. These rules shall be known as the Montana Rules of Appellate Procedure and may be cited as M.R.App.P.

(b) Effective date and application to pending proceedings. These rules will take effect on January 1, 1966. They govern all appeals and original proceedings brought after they take effect, and also all further proceedings in appeals and original proceedings then pending, except to the extent that in the opinion of the supreme court their application in a particular appeal or original proceeding pending when the rules take effect would not be feasible, or would work injustice, in which event the procedure existing at the time the appeal or original proceeding was brought applies.

(c) Statutes and rules superseded. Upon the taking effect of these rules all statutes and rules, and parts thereof, in conflict herewith, and the statutes and rules listed in Tables A, B, C, and D are superseded in respect of practice and procedure on appeals from the district courts to the supreme court and in original proceedings brought in the supreme court.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. and redes. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Compiler's Comments

Tables A, B, and C: Tables A, B, and C can be found with the annotations for this rule.

List of Statutes Superseded by Montana Rules of Appellate Procedure: The following table shows those sections of MCA superseded by the M.R.App.P.:

Table D. List of Statutes Superseded.

46-20-102	46-20-315	46-20-410
46-20-201	46-20-316	46-20-501
46-20-202	46-20-317	46-20-502
46-20-203	46-20-318	46-20-503
46-20-301	46-20-319	46-20-504
46-20-302	46-20-401	46-20-511
46-20-303	46-20-402	46-20-512
46-20-304	46-20-403	46-20-513
46-20-305	46-20-404	46-20-601
46-20-306	46-20-405	46-20-602
46-20-311	46-20-406	46-20-603
46-20-312	46-20-407	46-20-604
46-20-313	46-20-408	46-20-704
46-20-314	46-20-409	46-20-705

Appendix of Forms

Form 1.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE STATE OF MONTANA FROM A JUDGMENT OR ORDER OF A DISTRICT COURT
IN THE DISTRICT COURT OF THE .... JUDICIAL DISTRICT OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF .....

A.B., Plaintiff
vs.
C.D., Defendant

Notice of Appeal

Notice is hereby given that C.D., defendant above-named, hereby appeals to the supreme court of the state of Montana (from the final judgment) (from the order (describing it)) entered in this action on the .... day of ...., 19...

(S) .....
.....
Attorney for C.D.
(Address)

Form 2.

AFFIDAVIT TO ACCOMPANY MOTION FOR LEAVE TO APPEAL IN FORMA PAUPERIS
IN THE DISTRICT COURT OF THE .... JUDICIAL DISTRICT OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF .....

A.B., Plaintiff
vs.
C.D., Defendant

AFFIDAVIT IN SUPPORT OF APPLICATION TO PROCEED ON APPEAL WITHOUT PREPAYMENT OF COSTS

I, ..., being first duly sworn, depose and say that I am the ..... in the above-entitled case; that in support of my application to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are the following:

.....
.....

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed?

a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.

2. Have you received within the past 12 months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source?

a. If the answer is yes, describe each source of income, and state the amount received from each during the past 12 months.

3. Do you own any cash or checking or savings account?

a. If the answer is yes, state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

a. If the answer is yes, describe the property and state its approximate value.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury.

.....

Subscribed and Sworn to before me this .... day of ...., 19....

.....
Notary Public

Let the applicant proceed without prepayment of costs.

.....
District Judge

DOES NOT
CIRCULATE